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Home (1947) Department.

MS SERIES

Letter
G.O. No. 3432

Dated. 5-4-47

P 105

[Despatch Abstract.]

BILLS- THE HINDU CODE BILL- Opinions- Forwarded to the Government of India.

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No.F.229/47-C & G.(Judl)
Government of India,
Legislative Department.

From: Sir George Spence, K.C.I.E., C.S.I., I.C.S.,
Secretary to the Government of India.

To the Chief Secretary to the Government of Madras.

New Delhi, the 16th April 1947.

Sub: The Hindu Code.

Sir,

I am directed to enclose herewith a copy of the Hindu Code which was introduced in the Central Legislative Assembly on the 11th April 1947 together with 35 spare copies thereof.

2. In the ordinary course, the next motion moved on behalf of Government would have been for the circulation of the Bill for the purpose of eliciting opinion thereon. It was, however, impossible to move such motion in the course of the session which terminated on the 12th April and with a view to avoid the delay in the further progress of the Bill which would have resulted if a circulation motion had been left to be moved in the next session of the Assembly, the Government of India desire the Bill to be circulated for opinion by executive order in the hope that with the opinions received made available to members, the Legislature will be prepared to adopt a motion for reference to a Joint Committee of both Chambers with no antecedent circulation by order of the Assembly.

3. I am therefore to request that the Provincial Government will now invite the opinion of such individuals and organised bodies as in the judgement of the Provincial Government may be interested in the Provisions of the Bill in the manner in which such opinions would have been invited had a motion for the circulation of the Bill been adopted by the Legislative Assembly. I am also to request that the Provincial Government will favour this Department with an expression of their opinion on the provisions of the Bill and with the opinions of the High Court and of such organised public bodies and of such selected officers and other persons as the Provincial Government may think fit to consult on the subject.

I am also to request that the Bill and Statement may be published in the Fort St. George Gazette in English and in such other languages as the Provincial Government may deem proper, and that the dates of such publication may be communicated in your reply. The formula used when the Bill is published in the Gazette should explain that any person or public body desiring to submit an opinion on the Bill should do so through the Provincial Government only and that any opinion thereon which is submitted direct to the Legislative Department or to any other Department of the Government of India will not be accepted.

5. I am also to suggest that an opportunity may be afforded to the members of the Provincial Legislature to express their opinion on the Bill if they so choose and that for this purpose arrangements may be made to place a few copies of the Bill in the Library of the Provincial Legislature so that any member of the Legislature who wishes to submit his opinion may send it to the Provincial Government.

6. I am to request a reply to this letter in duplicate by the 31st July 1947.

7. I am further to request that the receipt of this letter may kindly be acknowledged.

Ihave the honour to be,
Sir,
Your obedient servant,

Sd.

Secretary to the Government of INdia.

True Copy

(To be Introduced in the Legislative Assembly)

A

B I L L .

to amend and codify certain branches of the Hindu Law

WHEREAS it is expedient to amend and codify certain branches of the Hindu Law as now in force in British India;

It is hereby enacted as follows:-

PART I- PRELIMINARY.

1. Short title, extent and commencement:- (1) This Act may be called the Hindu Code.

(2) It extends to the whole of British India.

(3) It shall come into force on the first day of January 1948.

2. Application of Code: (1) This Code applies to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including virashivas or Lingayats and members of the Brahmo, the Prarthana, or the Arya Samaj.

(2) It also applies to persons professing the Buddhist, Jaina or Sikh religion.

(3) (a) It shall be presumed, until the contrary is proved, that the whole of this Code applies to any person who is not a Muslim, Christian, Parsi or Jew by religion.

(b) Where it is proved that any such person, not being a Hindu, Buddhist, Jaina or Sikh by religion, is not governed by the Hindu Law or by any custom or usage as part of that Law in respect of all or any of the matters dealt with herein, this Code shall not apply to that person in respect of those matters.

(4) All references to the expression 'Hindu' in any portion of this Code shall be construed as if they included references to a person who is not a Hindu by religion but to whom such portion applies by virtue of the provisions in sub-sections (2) and (3).

( ) is governed by this Code.
( ) governed by this Code.
( ) not a Muslim Christian,
ll be governed by this
) the contrary.

(d) This Code applies to a child, legitimate or illegitimate both of whose parents are governed by it. If only one of the parents is so governed, this Code would apply to the child if he or she is brought up as a member of the community, group or family to which such parent belongs or belonged.

(e) This Code applies to a Hindu, Buddhist, Jaina or Sikh, who has merely deviated from the orthodox practices of his religion or expressed disbelief in any of the tenets thereof, but has not embraced the Muslim, Christian, Zoroastrian or Jewish religion.

Zoroastrian

3. Opera+ion of+Code in rela+ion+o previous cus+oms and usages.+- In regard +o any of +he ma++ers deal+ wi+h in +his Code, i+s provisions shall supersede any cus+om or usuage no+ hereby expressly saved.

4. "Cus+om"+and "Usuage" defined:- In +his Code, +he expressions "cus+om" and "usage" signify and rule which, having been con+inuously and uniformly observed for a long +ime, has ob+ained +he force of law among +he Hindus in any local area, communi+y, group, or family:

Provided +ha+ +he rule is cer+ain and no+ unreasonable or opposed +o public policy:-

Provided fur+her +ha+ in +he case or a rule applicable only + a family, i+ has no+ been discon+inued by +he family.

5. O+her defini+ions:- In +his Code; unless where is any+hing repugnan+ in +he subjec+ or con+ex+----

(a) "agna+e"- one person is siad +o be agna+e (go+raja) of ano+her, if +he +wo are rela+ed by blood or adop+ion wholly +hrough males:

(b) "cas+e" means one of +he four primary+varnas or cas+es recognised by Hindu+Law before +he commencemen+ of +his Code, and does no+ refer +o any sub-cas+e:

(c) "cogna+e" one person is said +o be a cogna+e (bandhu) of+ano+her,+if +he +wo are rela+ed by blood or adop+ion bu+ no+ wholly +hrough males.

(d) "Dis+ric+ Cour+" means +he+principal Civil Cour+ of original jurisdic+ion and includes +he High Cour+ in +he exercise of i+s ordinary original civil jurisdic+ion:

(e) "full-blood" and "half blood" +wo persons are said +o be rela+ed +o each o+her by full blood when +hey are descended from a common ances+or bu+ by differen+ wives;

"u+erine bloos" - +wo persons are said +o be rela+ed +o each o+her by u+erine blood when +hey are descended from a common ances+ress bu+ by differen+ bushands:

Explana+ion:+In +his clause, "ances+or" includes +he fa+her and "ances+ress" +he mo+her;

(f) "go+ra" and "pravara" have +he same meanings as in +he Hindu Law before +he commencemen+ of +his Code:

(g) "in+es+a+e" a person is deemed +o die in+es+a+e in respec+ of all proper+y of which he or she has no+ made a +es+amen+ary disposi+ion capable of +aking effec+;

(h) "Par+" menas any Par+ of +his Code:

(i) "rela+ed" means rela+ed by legi+ima+e kinship, provided +ha+ illegi+ima+e+children shall be deemed +o be rela+ed +o +heir mo+her and+o one ano+her, and +heir+legi+ima+e descendan+s shall be deemed +o be rela+ed +o +hem and +o one ano+her; and any word expressing rela+ionship or dena+ong in rela+ive shall be cons+rued accordingly;

(j) "s+ridhana" menas +he proper+y of a woman, howsoever acquired, whe+her by inheri+ance or devise, or a+ a par+i+ion, or in lieu of main+enance or arrears of main+enance, or by gif+ from any person, whe+her a rela+ive or no+, before, a+, or af+er her marriage, or by her own skill or exer+ions, or by purchase, or by prescrip+ion, or by any o+her mode.

6. Amendment of Act III of 1872: The Special Marriage Act, 1872 (III of 1872) is hereby amended to the extent specified in the fourth column of the First Schedule.

7. Repeals: The enactments specified in the Second Schedule are hereby repealed to the extent specified in the fourth column thereof.

PART II- INTESTATE SUCCESSION.

Introductory.

1. Part not to apply in certain cases- This Part shall not apply-

(i) to agricultural land, or

(ii) to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment, or

(iii) to any property of a Hindu governed by the Marumakkathayam, Aliyasanthana or Nambudri law of inheritance.

2. Definitions and Interpretation (1) In this Part, unless there is any thing repugnant in the subject or context---

(a) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Part;

(b) "heritable property" means all property or interest in property, which belongs to an intestate in his or her own right and passes by inheritance;

(c) "son" includes a dattaka, krithrima or godha son and also a dwyamushyayana, or an illatom son adopted before the commencement of this Code, but not a dasiputra; the expressions "duttaka son", "Krithima son", "godha son" "dwyamushyayana son", and "dasiputra" have the same meanings as in the Hindu Law before the commencement of this Code and the expression "illatom son" has the same meaning as in customary law before such commencement.

(2) In this Part, unless there is anything repugnant in the subject or context, words importing the measculine gender shall not be taken to include females.

(3) For the purposes of this Part---

(a) the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18 both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925);

(b) when an adoption takes place---

(i) in the case of a dattaka son, the natural tie is severed and replaced by the tie created by the adoption,

(ii) in the case of a dwyamushyayana son, the natural, tie continues side by side with the tie created by the adoption,

(iii) in the case of a kritrima or godha or an illatom son, the natural tie continues while the tie created by the adoption is limited to the person adopted and the person adopting him.

---

depending upon whether C was adopted as a dattaka, a dwyamushyyana a krithrima or godha or an illatom son of A.

If C is adopted as a dattaka son, he becomes the son of A and ceases to be the son of B. He ceases to be the grandson of B's father and the nephew of B's brother and becomes the grandsonof A's father and the nephew of A's brother. Likewise. D becomes the grandson of A but not of B.

If C is adopted as a dwyamushyayana son, he becomes the son of A; but continue to be the son of B as well. He also becomes the grandson of A's father and the nephew of A's brother, but continues as well to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A and of B as well.

If C is adopted as a krithima of godha or an illatom son, he becomes the son of A while continuing to be son of B as well. ~~He also becomes the grandson of A's father and the nephew of A's brother, but continues as well to be the gran~~ He does not, however, beocome the grandson of A's father or the nephew of A's brother, but remains the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of B but not of A.

3. Application of Part: Save as provided in section 4 this Part regulates the succession to the heritable property of a Hindu dying intestate after the commencement of this Code in the following cases, namely:

(a) Where the property is movable property, unless it is proved that the intestate was not domiciled in British India at the time of his or her death or not:

Provided that upon the death of any woman who, at the commencement of the Code, had the limited estate known as the Hindu woman's estate in any property, such property shall devolve on the persons who, under this Part, would havebeen the heirs of the last full owner thereof, if such owner had died intestate immediately after her.

Succession to the Property of Males.

4. Devolution of heritable property of males:-- The heritable property of a male intestate shall devolve according to the rules laid down in this Part

(a) upon the enumerated heirs referred to in section 5, if any;

(b) if there is no enumerated heir, upon his agnates, if any:

(c) if there is no agnate, upon his cognates, if any;

(d) if there is no cognate, upon the heirs referred to in section 10, if any.

5. Enumerated heirs:- (1) The following relatives of an intestate are his enumerated heirs:--

Class I _ Heirs in the compact series-

(1) Son, widow, daughter; son and widow of a predeceased son son and widow of a predeceased son of a predeceased son.
(2) Daughter's son.
(3) Mother
(4) Father
(5) Brother.
(6) Brother's son.

Class II- Other descendants---

(1) Son's daughter.
(2) Daughter's daughter.
(3) Son's Daughter's son.
(4) Son's son's daughter.
(5) Son's daughter's daughter.
(6) Daughter's son's son.
(7) Daughter's son's daughter.
(8) Daughter's daughter's son.
(9) Daughter's daughter's daughter.

Class III- Other descendants of Father---

Class III- Other descendants of Father---

(1) Brother's son's son.
(2) Sister.
(3) Sister's son.
(4) Brother's daughter.
(5) Sister's daughter.

Class IV _ Father's mother, father's and his descendants--

(1) $F_a$ther's mother.
(2) $F_a$ther's father.
(3) Father's brother.
(4) Father's brother's son.
(5) Father's brother's son's son.
(6) Father's sister.
(7) Father's sister's son.
(8) Father's brother's daughter.
(9) $F_a$ther's sister's daughter.

Class V- Father's father's mother. father's father's father and his descendants---

(1) $F_a$ther's father's mother.
(2) Father's father's father.
(3) Father's father's brother.
(4) Father's father's brother's son.
(5) Father's father's brother's son's son.
(6) Father's father's sister.
(7) $F_a$ther's father's sister's son.
(8) $F_a$ther's father's brother's daughter.
(9) Father's father's sister's daughter.

Class VI- Mother's mother, Mother's father and his descendants---

(1) Mother's mother.
(2) Mother's father.
(3) Mother's brother.
(4) Mother's brother's son.
(5) Mother's brother's son's son.
(6) Mother's sister.
(7) Mother's sister's son.
(8) Mother's brother's daughter.
(9) Mother's sister's daughter.

(2) In the Province of Bombay, sub-section (1) shall have effects if--

(i) in class IV, between the father's mother and the father's father, the following heirs had been inserted, namely;---

"(1A) Father's widow.

(1B) Brother's widow.

(1C) Brother's son's widow.

(1D) Brother's son's son's widow"

(ii) in Class V between the father's father's mother and the father's father's father's father, the following heirs had been inserted, namely:---

"(1A) Father's father's widow.
(1B) Father's brother's widow.
(1C) Father's brother's sons widow.
(1D) Father's brother's son's son's widow"; and

(iii) after Class V. the following Class had been inserted, namely:---

Class V A- Widows of certain gotraja sapindas---

Class VA- Widows of certain gotraja sapindas-

(1) Father's father's father's widow.
(2) Father's father's Brother's widow.
(3) Father's father's brother's son's widow.
(4) Father's father's brother's son's son's widow".

(3) In sub-section (1) and (2) references to a "brother" or "sister" do not include references to a brother or sister by uterine blood.

6. Order of succession among enumerated heirs:-- Among the enumerated heirs, those in one Class shall be preferred to those in any succeeding class; and within each class, those encluded in one entry shall be preferred to those included in any succeeding entry, while those included in the same entry shall take together.

Illustrations.

(i) The surviving relatives of an intestate are his widow, his sister and his father's father; The widow who is included in Class I is preferred to the sister who is in Class III and the father's father who is in Class IV.

(ii) The surviving relatives are three sons, two grandsons, ~~three daughters~~, ~~two grand-sons~~ and the widow of another predeceased son,. All of them being enumerated heirs included in entry (1) of Class I succeed simultaneously, no one excluding the others. (by a pre-deceased son)

(iii) The surviving relatives are a widow, two sons, three daughters, two grand-sons by a pre-deceased son and a great-grand-daughter by another pre-deceased son's predeceased son- All of them, except the last, being enumerated heirs included in entry (1) of Class I, succeed simultaneously. The great grand-daughter who is in entry (4) of Class II does not take anything.

(iv) In the Province of Bombay, the father's widow (step-mother) who is in Class IV preferred to the mother's mother who is in Class VI.

7. Manner of distribution among enumerated heirs in entry (1) of Class I:- The distribution of an intestate's property among the enumerated heirs in entry (1) of Class I above shall take place according to the following rules, namely:---

Rule1:- The intestate's widow, or if there is more than one widow, all the widows together, shall take one share.

Rule 2: Each surviving son of the intestate shall take one share whether he was undivided or divided from the intestate or re-united with him.

Rule 3:-(1) The heirs in the branch of each predeceased son of intestate shall take between them one share if there is a son or son's son such pre-deceased son. and half a share in other cases.

(2) The distribution of the share or half-share aforesaid among the heirs branch of a predecoased son shall be made so that his widow (or widows together) and each of his surviving sons get equal portions and the branch of each of his deceased sons gets the same portion if it contains a son of such predeceased son one-half of such portion in other cases.

Rule 4:- Each surviving daughter of the intestate shall take half- a share whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

Illus+ra+ions.

(i) The surviving heirs of an intes+a+e are +hree sons, A, B and C, five grandsons by deceased son D, and +wo grea+-grandsons by a pre-deceased son of ano+her pre-deceased son E. A, B and C +ake one share each under Rule 2, and +he branches of D and E ge+ one share each under Rule 3(1). The grandsons in D's branch and the grea+ grandsons in E's branch divide +he share allo+ted +o +heir respec+ive branches equally by vir+ue of Rule 3(2): Each son of +he in+es+a+e +herefore +akes one-fif+h of +he heri+able proper+y; each grandson one-+wen+y fifth and each grea+ grandson one-+en+h.

(ii) Only a widow or daugh+er survives +an in+es+a+e. She +akes +he whole of +he heri+able proper+y.

(iii) The surviving heirs are a widow and two grandsons by a predeceased son. The widow takes one share under Rule 1, and +he grandsons +oge+her +ake one share under Rule 3(1). The widow therefore +akes one-half of +he heri+able proper+y and each grandson one-four+h.

(iv) The surviving heirs are a daughter and +he widow of a predeceased son. Under Rule 4 +he daugh+er +akes half-a-share and under Rule 3(1) +he daugh+er-in-law also +akes half-a share. The heritable proper+y is +hus equally divided be+ween +he +wo.

(v) The surviving heirs are a son, a daughter, and the widow of a predeceased son. Under rule 2, +he son ge+s one share; under Rule 4, +he daughter ge+s half-ashare; under Rule 3(1) +he widow of +he predeceased son ge+s half+a-share. In +he resul+, +he son +akes half the proper+y and +he daugh+er and +he daugh+er-in-law take one-four+h each

(vi) The surviving heirs ar a son, a daughter, and the widow and the son of a predeceased son. Under Rule 2, the son gets on share; under Rule 4, the daughter gets half-a-share; under Rule 3(1) the widow and the son of the predeceased son get between them one share which has then to be distributed euqlly between them. In the result the son take s two-fifths of the property and the other heirs one-fifth each.

~~(vii) The surviving heirs are, the daugh+er ge+s half-a-share~~ under Rule 3(1) +he widow of +he firs+ men+ioned predeceased son- (d) above- ge+s half-ashare; under +he same Rule, +he heirs men+ioned in (e) above be+ween +hem ge+ one share, which has +hen +o be dis+ribu+ed euqally among +hem. In +he resul+, +he widow and +he son of +he in+es+a+e each +ake one-four+h of +he proper+y; +he daugh+er and +he daugh+er-in-law men+ioned in (d) each +ake one-eigh+h; and +he remaining heirs each +ake one+welf+h.

(viii) +he Surviving heirs are;
(a) a son
(b) +he widow and +hree sons of a predeceased son.
(c) +he widow of a predeceased son of +he predeceased son referred +o in (b).

The son gets one share under Rule 2, and +he heirs in en+ries (b) and (c) +oge+her, ge+ one share. The la+er share should be dis+ribu+ed, by vir+ue of Rule 3(2) so +ha+ +he widow and each of +he sons in en+ry (b) ge+ one por+ion each and +he widow in en+ry (c) ge+s one half of +he heri+able proper+y, +he widow of his predeceased son ge+s one nin+h, each of +he +hree sons of such pre-deceased son also ge+s one-nin+h, and +he widow of +he in+es+a+e's grandson ge+s one-eigh+een+h.

of such a portion. In the result the intestates son gets one half

8. Order of succession among non-enumerated heirs(1) Where there is no enumerated heir, the order of succession among the intestate's agnates, or failing such agnates, among his cognates, shall be determined by applying the Rules of Preference in section 9.

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below:---

Illustrations.

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent, but has three degrees of ascent represented in order by (1) the intestate's father (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but has four degrees of ascent represented in order by (1) the intestate's father (2) that father's mother (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but has four degrees of descent represented in order by (1) the intestate's son (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent ~~but has four degrees of~~ represented in order by (1) intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented in order by (1) the daughter of the common ancestor, viz., the mother's father's father and (2) her son (the heir).

9. Rules of Preference:- The Rules of Preference referred to in section 8 are as follows:---

Rule 1:- Of two heirs, the one who has fewer or no degrees of ascent, preferred.

Rule 2:- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3:- Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4:- Where the two lines cannot be so distinguished, the heir who is a male is preferred to the heir who is a female.

Rule 5: Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

Illustrations.

In the following illustrations, the letters F and M stand for the father and mother respectively in that portion of the line which ascends from the intestate to the common ancestor, and the letters S. and D for the son and daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS for the intestate's father's daughter's son (cousin's son)

(i) The competing heirs are (1) FFSSD (father's brother's son's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor, yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(ii) The competing heirs are (1) SDSS (Son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSSD (maternal uncle's son's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter): The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MFFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz., three; but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMF (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both the cases is the same; and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(viii) The competing heirs are (1) FDSS (sister's [illegible] son's son) and (2) MFDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point, No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS (father's mother's sister's son). The former is preferred.

(x) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDDS (sister's daughter's daughter). The former is preferred.

(xi) The competing heirs are a daughter's daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

10. Heirs who are not related:- If there is no enumerated heir, agnate or cognate entitled to succeed under section 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor (acharya); if there is no preceptor, upon the intestate's disciple (sishya); and if there is no disciple, upon the intestate's fellow student (sa-brahmachari).

Explanation: For the purposes of this section, the imparting or receiving of purely religious instruction at the house of the preceptor (acharya) or of the same preceptor (acharya) as the case may be, shall alone be taken into account.

11. Rules for hermits, etc: (1) Where a person completely and finally renounces the world by becoming a hermit (vanaprastha), an ascetic (yati or sanyasi), or a perpetual religious student (naishthika brahmachari), his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows:-----

(a) In the case of a hermit (vanaprastha), upon a spiritual brother belonging to the same hermitage (dharmabhratrika-irtha).

(b) In the case of an ascetic (yati or sanyasi), subject to any custom or usage governing the case, upon his virtuous disciple (sacchishya)

(c) In the case of a perpetual religious student (naishthika brahmachari), upon his preceptor (acharya).

12. Application of Partition Act, 1893, in certain cases:- Where, after the commencement of this Code, a share in any immovable property of a male intestate in any business carried on by him, whether solely or in conjunction with others, devolves upon one or more of the intestate's sons, sons' sons, or sons'-sons' sons together with other relatives, and one of the latter sues for partition, the provisions of the Partition Act, 1893 (IV of 1893), shall apply as if he or she were the transferee of a share of a dwelling-house and the intestate's family were an undivided one.

STRIDHANA.

13. Rights of women over stridhana:- A woman shall have the same rights as regards stridhana acquired by her after the commencement of this Code, including the right to dispose of it by transfer inter vivos or by will, as a man has over property acquired by him in the like manner, that is to say; a woman's rights over stridhana shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

Illustrations.

(i) A hindu dies intestate leaving a widow or daughter as his heir,. She inherits his entire estate under this Part. By virtue of the above section, she will have full rights therein as if she were a male heir.

(ii) A hindu dies, leaving a will by which he confers upon his widow a life estate in his property with no powers of alienating the corpus. She will succeed only to a life estate under this section. The reason is that even if a man had succeeded to the property in the like manner, that is to say, by a similar provision in the will, he too would have taken only a life estate; the restriction in this case is not by reason of the widow's sex but by reason of the provision in the will.

14. Order and mode of succession to stridhana:-(1) The stridhana of a woman dying intestate; in so far as it consists of heritable property, shall, subject to the proviso to section 5, devolve upon the following relative of the intestate, in the order mentioned, namely:---

(1) Daughter; son;

(2) Grandchild;

(3) Husband;

(4) Mother;

(5) Father;

(6) Husband's heirs, in the same order according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife;

(7) Mother's heirs, in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(8) Father's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his daughter.

(2) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of sub-section (1), they shall take together.

(3) (i) Stridhanaa devolving on children under entry (1) in sub-section (1) a son shall take half the share of a daughter.

(ii) Grandchildren shall take stridhana devolving on them under entry (2) in sub-section (1) per stirpes, that is to say, the grandchildren by each deceased son or daughter shall take the share which he or she would have taken if he or she had been alive at the time of the intestate's death, the distribution among grandchildren by the same son or daughter being made so that each grandson takes half the share of a granddaughter.

(4) A daughter; son's daughter or daughter's daughter shall take the same share whether she is unmarried, married or a widow; rich or poor: and with or without issue or possibility of issue.

Illustrations.

(i) The surviving relatives of a woman are four married granddaughters by one daughter A, and three unmarried grand-daughters by another daughter, B. Each of A's daughters takes 1/8th of the property and each of B's daughters takes 1/6th.

(ii) The surviving relatives of a woman are a son by one daughter, A, and a daughter by another daughter, B. A's son and B's daughter take equally.

(iii) The surviving relatives of a woman are a son and two daughters by a son A and the sons and four daughters (two of whom are married) by a daughter, B. A's son takes 1/15th of the property, each of A's two daughters takes 2/15ths; each of B's three sons takes 2/33rds; and each of B's four daughters takes 4/33rds.

(iv) A maiden dies leaving a mother and a brother. Her property goes to the mother.

GENERAL PROVISIONS.

15. Full blood preferred to half blood:- Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Explanation: In the Province of Bombay the widow of a person related to an intestate by full blood shall be preferred to the widow of a person related to him in the same way by half blood.

Illustrations.

(i) A brother by full blood is preferred to a brother by half blood; but a brother by half-blood succeeds before a brother's son by full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by half blood is preferred to a paternal uncle's son by full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 4 in section 9, is preferred although he is only related by half blood.

(iv) In Bombay, a full brother's widow is preferred to a half brother's widow.

16. Right of child in womb: A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

17. Right of surviving spouse and descendants of a valid marriage:- The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste, if any, shall, for all the purposes of this Code, have the same rights as if the marriage had been contracted within his or her own caste.

18. Hermit, etc., disqualified:- A person who has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 11 shall be disqualified from inheriting the property of any of his relative by blood, marriage or adoption.

19. Unchaste wife disqualified:- A woman who, after marriage has been unchaste during her husband's life-time, shall, unless he has condoned the unchastity, be disqualified from inheriting his property.

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

21:Conver+'s descendan+s disqualified;- Where, before or af+er +he commencemen+ of +his Code, a Hindu has ceased or ceases +o be one by conversion +o ano+her religion, children+ born +o him or her af+er such conversion and +heir descendan+s shall be disqualified from inheri+ing +he proper+y of any+of +heir Hindu rela+ives, ~~unless~~ such children or descendan+s are Hindus a+ +he +ime when +he succession opens.

22. Succession when heir+disqualified:-+If any person is disqualified from inheri+ing any proper+y under sec+ions 18, 19,20 or 21+i+ shall devolve as if such person had died before +he in+es+a+e.

23. Disease, defec+, e+c., no+ +o disqualify:+ No person shall be disqualified from succeeding +o any proper+y on +he ground of any disease, defec+ or deformi+y, or save as provided in sec+ions 18,19, 20 or 21 on any o+her ground wha+soever.

24. Mode of succession of +wo or more heirs:- If +wo+or more heirs succeed +oge+her +o +he proper+y of an in+es+a+e, +hey shall +ake +he proper+y----

(a)+save as o+herwise expressly provided in +his Par+, per capi+a and no+ per s+irpes; and

b) as +enan+s in common and no+ as join+ +enan+s.

25. Eschea+:- If an in+es+a+e has lef+ no heir, or no heir qualified +o succeed +o his or her heri+able proper+y, such proper+y shall go +o +he crown; and +he Crown shall +ake +he proper+y subjec+ +o all +he obliga+ions and liabili+ies +o which an heir would have been subjec+.

PART III. TESTAMENTARY SUCCESSION.

Indian+Succession Act, 1925, and o+her enac+men+s +o apply +o +es+amen+ary succession of Hindus:- In regard +o +es+amen+ary succession, Hindus shall be governed by such provisions of +he + Indian Succession Ac+, 1925 (XXXIX of 1925), and o+her enac+men+s as may, for +he +ime being, be applicable +o +hem.

PART III-A. GENERAL PROVISIONS CONNECTED WITH SUCCESSION.

DivisionI:- Scope and Operation of Par+s II and III.

1: Devolu+ion of in+eres+ in join+ family proper+y:+ Any in+eres+ in join+ family proper+y (o+her +han proper+y excluded from +he opera+ion of Par+ II+by sec+ion 1 +hereof) possessed by a male Hindu dying af+er +he commencemen+ of +his Code,+shall devolve in every case, no+ by survivorship, bu+ by +es+amen+ary or in+es+a+e succession, as +he case may be.

Illus+ra+ion.

A male Hindu who was a member of a join+ family governed by+ +he Mi+akshara school of+Hindu Law when +his codecomes in+o opera+ion dies in+es+a+e, leaving+him surviving a widow and a daugh+er, bu+ no son or descndan+ of a son. His in+eres+ in +he join+ family proper+y,+o+her +han agricultural land; will pass +o +he widow and duagh+er by succession, and no+ +o +he o+her coparceners by survivorship.

2. No righ+ by+bir+h in proper+y devolving af+er+commencemen+ of Code:-- Where af+er +he commencemen+ of +his Code +he proper+y of any+male Hindu (including his in+eres+ in join+ family proper+y) devolves by +es+amen+ary+or in+es+a+e succession on his son, son+s son, or son's son, +he+la++er shall++ake +he proper+y in +he same+manner and have +he same righ+ +o dispose of+i+ by +ransfer in+er+vivos or by will as he would have had no+ been so rela+ed +o +he deceased.

DIVISION II. Maintenance.

3. Maintenance explained:- In sections 4 to 9 the expression "maintenance" includes---

(i) in all cases, provision for food, clothing, residence, education, and medical attendance and treatment; and

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage, including the value of gifts and presents to her or to the bridegroom on the occassion.

4. Right to maintenance of certain dependants out of estate of deceased:- Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a male Hindu dying after the commencement of this Code, or where, in a case of testamentary succession, the share so obtained by a dependant is less than what would be awarded to him or her by way of maintenance under this Part, he or she is entitled, subject to the provisions of this Part, to maintenance from those who take the estate, the liability of each being in proportion to the value of the share or part of the estate taken by him or her;

Provided that no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would if the liability to contribute were enforced become, less than what would be awarded to him or her by way of maintenance under this Part.

5. Dependants enumerated:- (1) The following relatives of the deceased shall be deemed to be his dependants for the purposes of the foregoing section:---

(i) His father.
(ii) His mother.
(iii) His widow, so long as she does not remarry.
(iv) His son of his pre-deceased son, or son of a pre-deceased son of his pre-deceased son, who is a minor, so long as he remains one, provided and to the extent that he is unable to obtain maintenance; in the case of a grandson, from his father's estate, and in the case of a great-grandson, from the estate of his father or father's father.

(v) His married daughter, provided and to the extent that she is unable to obtain maintenance from her husband or from her son, if any, or his estate.

(vii) His widowed daughter, provided and to the extent that she is unable to obtain maintenance (a) from the estate of her husband, or (b) from her son, if any, or his estate, or (c) from her father-in-law or his father or the estate of either of them.

(viii) Any widow of his son or of a son of his predeceased son, so long as she does not remarry, provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son if any, or his estate; or in the case of a grandson's widow, also from her father-in-law's estate.

(ix) His minor illegitimate son, so long as he remains a minor.

(x) His unmarried illegitimate daughter, so long as she remains unmarried.

(2) A concubine who was kept continously by the deceased up to the time of his death and whose connection with him was not incestuous or adulterous shall also be deemed to be a dependant for the purposes of sub-section (1) unless she becomes the concubine of another man, or leads the life of a prostitute, or marries or remarried.

In+roduc+ory.

1. In+erpre+a+ion:-"In +his Par+, unless +here is any+hing repugnan+ in +he subjec+ or con+ex+:---

(a) (i) "sapinda rela+ionship" wi+h reference +o any person ex+ends as far as +he +hird genera+ion (inclusive) in +he line of ascen+ +hrough +he mo+her, and +he fif+h ((inclusive) in +he line of ascen+ +hrough +he fa+her, +he line being +raced upwards in each case from +he person concerned, who is +o be coun+ed as +he firs+ genera+ion;

(ii) +wo persons are said +o be "sapindas" of each o+her if one is a lineal ascendan+ of +he o+her wi+hin +he limi+s of sapinda rela+ionship, or if +hey have a common lineal ascendan+ who is wi+hin +he limi+s of sapinda rela+ionship wi+h reference +o each of +hem.

(b) +wo person are said +o be wi+hin "+he degrees of prohibi+ed rela+ionship if one is a lineal ascendan+ of +he o+her, or was +he wife or husband of a lineal ascendan+ or descendan+ of +he o+her, or if +he +wo are bro+her and sis+er, or uncle and niece aun+ and nephew, or +he children of +wo bro+hers or of +wo sis+ers.

Explana+ion:- For +he purposes of clauses (a) and (b) rela+ionship includes:----

(i) rela+ionship by half or u+erine blood as well as by full blood;
(ii) illegi+ima+e blood rela+ionship as well as legi+ima+e;
(iii) rela+ionship by adop+ion as well as by blood;

and all +erms of rela+ionship in +hose clauses shall be cons+rued accordingly.

Illus+ra+ions.

(i) C, +he common ances+or, is +he fa+her's mo+her's fa+her's fa+her of A and +he mo+her's fa+her of B. As C is +he fif+h genera+ion from A in A's fa+her's line and +he +hird genera+ion from B in B's mo+her's line, A and B are sapindas of each o+her:

(ii) A and B are consanguine bro+her and sis+er: Their discendants, wi+hin +he limi+s of sapinda rela+ionship, will be sapindas of each o+her. The descendants of +heir fa+her and his ances+ors will also be sapindas of A and B and +heir descendan+s wi+hin +he limi+s of sapinda rela+ionship. Bu+ +he ma+ernal grandfa+her of A will no+ necessarily be a sapinda of +he ma+ernal grandfa+her of B, nor will a son of +he former ma+ernal grandfa+her necessarily be a sapinda of a son of +he la++er.

(iii) A and B are u+erine bro+her and sis+er. Their descendants, wi+hin +he limi+s of sapinda rela+ionship, will be sapindas of each o+her. The descendants of +heir mo+her and her ances+ors will also be sapindas of A and B and +heir descendan+s wi+hin +he limi+s of sapinda rela+ionship. Bu+ +he pa+ernal grandfa+her of A will no+ necessarily be a sapinda of +he pa+ernal grandfa+her of B, nor will a son of +he former pa+ernal grandfa+her necessarily be a sapinda of a son of +he la++er.

2. Two forms of Hindu marriage:- There shall be two forms of +he Hindu marriage, namely:---

(a) a sacramen+al marriage;
(b) a civil marriage.

6. Amount of maintenance:- (1) In determining the amount of maintenance, if any, to be awarded to a dependant, regard shall be had to---

(a) the net value of the estate of the deceased, after providing for the payment of his debts:

(b) the share, if any, of such estate obtained by the dependant;

(c) the position and status of the deceased and of the dependant;

(d) the degree of relationship between the two;

(e) the reasonable wants of the dependant;

(f) the past relations between the dependant and the deceased;

(g) in the case of a widow of the deceased, the income, if any, which she may reasonably be expected to derive from stridhana given to her by him or his father, but not the income from her own earnings or any other source; and

(h) in the case of any other dependant, the value of his or her separate property including in the case of a woman, stridaha of all kinds) and any income derived from such property, or from his or her own earnings, or from any other source:

Provided that the marriage expenses admissible in respect of an unmarried daughter shall in no case exceed the value of one-half of what she would have inherited from the deceased, if he had died intestate.

(2) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded to a dependant, with due regard to the considerations set out in sub-section (1) so far as they are applicable.

(3) The amount of maintenance, whether fixed by a decree of Court or by agreement, either before or after the commencement of this Code, may be altered subsequently, if there is a material change in the circumstances, justifying such alteration.

7. Maintenance of widow residing outside family house: Where a widow of the deceased, in contravention of the terms of a will or deed executed by him, resides elsewhere than in his family house without just cause, she shall not be entitled to any maintenance so long as she so resides.

8. Debts to have priority:- Debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Division.

9. Maintenance when to be a charge: A dependant's claim for maintenance under the above provisions shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of Court; by agreement between the dependant and the owner of the estate or portion, or otherwise.

DIVISIONIII:- Presumption of Survivorship in regard to claims to Property.

10. Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all pruposes affecting succession to property, it shall be presumed, until the contrary is proved that the younger survivied the elder.

PART IV. MARRIAGE AND DIVORCE.

Chapter I:- Celebration of Marriage:

SACRAMENTAL MARRIAGE.

3. Requisites of a sacramental marriage: A sacramental marriage may be solemnized between any two Hindus upon the following conditions, namely:---

(1) neither party must have a spouse living at the time of the marriage;
(2) neither party must be an idiot or a lunatic at the time of the marriage;

(3) the bridegroom must have completed the age of eighteen years, and the bride the age of fourteen years;

(4) the parties must not be within the degrees of prohibited relationship;

(5) the parties must not be sapindas of each other, unless the custom or usage governing each of them permits of a sacramental marriage between the two; and

(6) If the bride has not completed her sixteenth year, the consent of her guardian in marriage must have been obtained for the marriage.

Explanation: For the removal of doubts, it is hereby declared that a sacramental marriage solemnized between Hindus before the commencement of this Code which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid, by reason only of the fact that the parties there to belonged to the same gotra or pravara, or belonged to different sub-divisions of the same caste.

4. Ceremonies required: (1) A sacramental marriage may be solembized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

5. Sacramental marriage not to be invalid in certain cases: Unless there was force or fraud, a sacramental marriage shall not, after it has been completed, be deemed to be invalid, or ever to have been invalid, merely on the ground that the consent of the brid's guardian in marriage was not or had not been obtained.

6. Entering of particulars relating to sacramental marriage in a register:---(1) For the purpose of facilitating the proof of sacramental marriages, rules may be prescribed for the entering of particulars relating to such marriages in such manner as may be prescribed in the Hindu Civil marriage Certificate Book kept under section of this Chapter.

writing (2) No such entry shall be made except with the consent in ~~writing~~ of both the parties to the marriage, provided that where the wife has not completed the age of sixteen years, the consent of her guardina instead of her consent shall be required.

(3) The making of such an entry shall not be compulsory in the case of a sacramental marriage and the validity of the marriage shall in no way be affected by the omission to make the entry.

CIVIL MARRIAGE.

7. Requisites of a civil marriage:- A civil marriage may be contracted under this Chapter by any two Hindus, upon the following conditions, namely:---

(1) neither party must have a spouse living at the time of the marriage;

(2) neither party must be an idiot or a lunatic at the time of the marriage.

(3) the bridegroom must have completed the age of eighteen years and bride the age of fourteen years;

(4) the parties must not be within the degrees of prohibited relationship and;

(5) each party must, if he or she has not completed the age of twenty years, have obtaind the consent of his or her guardian in marriage, provided that no such consent shall be required in the case of a widow.

8. Marriage Registrars: (1) The Provincial Government may appoint one more persons, being Hindus, to be Registrars under this Chapter for any portion of the Province.

(2) Any officer so appointed shall be called "Registrar of Hindu Civil Marriages" and is hereinafter referred to as "the Registrar".

(3) The portion of the Province for which any such officer is appointed is hereinafter referred to as his "district".

9. Notice of marriage to Registrar:- (1) When a civil marriage is intends to be contracted under this Chapter, both the parties must give notice in wiriting to the Registrar beofre whom it is to be contracted.

(2) The Registrar to whom such notice is given must be the Registrar of district within which one at least of the parties to the marriage has resided for not less than thirty days before such notice is given.

(3) Such notice may be in the form specified in the third Schedule.

10. Marriage Notice Book and publication:- (1) The Registrar shall file all notices given under section 9 and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book furnished to him for the purpose by the Provincial Government, to be called the "Hindu Civil Marriage Notice Book" and such book shall be opened at all reasonable times, without fee to every person desirous of inspecting the same.

(2) The Registrar shall also publish every such notice in suhh manner as he may consider suitable.

11: Objection to marriage: (1) Thirty days after notice of an intended marriage has been given under section 9, the marriage has been given under section 9, the marriage may be contracted unless it has been objected to under sub-section (2).

(2) Any person may, before the expiration of thirty days from the giving of the notice of an intended marriage, object to the marriage on the ground that it woulf contravene one or more of the conditions prescribed in clauses (1) (2) (3) (4) and (5) of section7.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

12. Procedure of Registrar on receipt of objection:- (1) If an objection is made under section 11 to an intended marriage the Registrar shall not allow the marriage to be contracted until the lapse of thirty days from the receipt of such objection if there is a Court of competent jurisdiction open at the time or, if no such Court is open at the time, until the lapse of thirty days from the opening of such a Court.

(2) The person objecting to the intended marriage may file a suit in the District Court having local jurisdiction, or in any other Court empowered in this behalf by the Provincial Government and having such jurisdiction, for a decree declaring that such marrige would contravene one or more of the conditions prescribed in clauses (1) (2) (3) (4) and (5) of section7, and the officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection; if there is a Court of competent jurisdiction open at the time or if no such Court is open at the time, within thirty days from the opening of such a Court, the marriage shall not be contracted until the decision of such Court has been given and the period allowed by law for appeal from such decision has elapsed, or, if there is an appeal from such decision, until the decision of the Appellate Court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3) or if the decision of the Court is that the marriage would not contravene any of the conditions prescribed in clauses (1) (2) (3) (4) and (5) section 7 the marriage may be contracted.

(5) If the decision of the Court is that the marriage would contravene any of the conditions prescribed in clauses (1) (2) (3) (4) and (5) of section 7, the marriage shall not be contracted.

13. Power of Court to fine when objection not reasonable: If it appears to the Court that the objection was not reasonable and bona fide, it may impose a fine not exceeding one thousand rupees on the person objecting, and award it or any part thereof to the parties to the intended marriage.

14. Declaration by parties and witnesses:- Before the marriage is contracted, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form specified in the Fourth Schedule. If either party has not completed the age of twenty one years, the declaration shall also be signed by his or her guardian, except in the case of a widow; and, in every case, it shall be countersigned by the Registrar.

15. Marriage how to be contracted:- The marriage shall be contracted in the presence of the Registrar and of the three witnesses who signed the declaration. The contracting may be done in any form, provided that each party say to the other, in the presence and hearing of the Registrar and witnesses, "I, (A) take thee(B), to be my lawful wife (or husband)".

16. Marriage where to be contracted :- The marriage may be contracted:--

(a) at the office of the Registrar, or

(b) at such other place within reasonable distance therefrom as the parties desire, upon such conditions and on the payment of such additional fee as may be prescribed.

17. Certificate of marriage: When the marriage has been contracted the Registrar shall enter a certificate thereof, in the form specified in the Fifth Schedule, in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriage Certificate Book", and such certificate shall be signed by the parties to the marriage and the three witnesses.

18. Registration of sacramental marriage as civil marriage: (1) Any two persons between whom a ceremony of marriage in any Hindu form has been performed, before or after the commencement of this Code, may at any time apply to the Registrar of the district where either of them has resided for not less than thirty days before the application, to have their marriage registered as a civil marraige contracted before the Registrar.

(2) If after giving public notice of the application and allowing a period of thirty days for objections and hearing any objections received within that period, the Registrar is satisfied, ;;

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since;

(b) that the conditions in clauses (1) to (4) of section 7 are satisfied as between the parties to the marriage on the date of the application.

(c) Where either party, not being a widow at the time of the marriage, has not on the date of the application completed the age of twenty- one years, that the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage;

he shall enter a certificate of the marriage in the Hindu Civil Marraige Certificate Book in the form specified in the Sixth Schddule, and such certificate shall be signed by the parties to the marriage, as well as by three witnesses; and ~~thereupon the marriage shall be signed by the parties to the marriage as well as by three witnesses; and thereupon the marriage~~ shall be deemed to have been a civil marriage, valid for all purposes, as form the date of the applicaaion and all children born after the date of the ceremony aforesaid (whose names should also be entered in the certificate and the Hindu Civil Marriage certificate book) shall in all respects, be deemed to be, and always to have been, the legitimate children of their parents .

Explanation:-The registration of a marriage as a civil marriage under the section shall not be refused on the ground that at the time when the ceremony of marriage was performed, neither party or only one of the parties was a Hindu.

19. Marriage Certificate Book to be open to inspection, etc:- The Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection; and shall be admissible as evidence of the truth of the statements therein contained Certified extracts thereform shall, on application, be given by the Registrar or payment to him of the prescribed fee.

20. Transmission of copies of entries in Marriage Certificate Book to the Registrar-General of Births, Deaths and Marriages: The Registrar shall send to the Registrar-General of Births, Deaths, and Marriages for the Province within which his district is situate, at such intervals as may be prescribed a true copy, in the prescribed form and certified by him, of all entries made by him in the Hindu Civil Marriage Certificate Book since the last of such intervals.

21. Fees: The fees to be paid to the Registrar for the duties to be discharged by him under this Chapter shall be such as may be prescribed.

22. Penalty for signing false declaration or certificate :- Every person making signing or attesting any declaration or certificate required under this Chapter, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to be guilty of the office described in section 199 of the Indian Penal Code (XLV of 1860).

General Provisions.

23. Guardianship in marriage:- (1) Subject to the provisions of Part V; the following persons, in the order given, are entitled to be guardians in marriage:---

(a)of a Hindu girl who has not completed the age of sixteen years, for the purposes of her sacramental marriage:

(b) of a Hindu boy; or of a Hindu girl other than a widow, who has not completed the age of twenty-one years, for the purposes of his or her civil marriage, or of the registration of his or her marriage as a civil marriage, under this Chapter:----

(1) the father;
(2) the mother;
(3) the paternal grandfather;
(4) the brother by full or half blood, a brother by fullblood being preferred to one by half blood and as between brothers both by full or half blood, the elder being preferred;
(5) the paternal uncle by full or half-blood, subject to the like rules of preferance as are set out in entry (4) above;
(6) the maternal grandfather;
(7) the maternal uncle, subject to the like rules of preference as are set out in entry (4) above;
(8) any other relative, the nearer being preferred to the more remote and as between relatives related in the same way, subject to the like rules of preference as are set out in entry (5) above.

Explanation: In determining which of two relatives is nearer for the pruposes of entry (8) above; the test shall be, which of them is first entitled to inherit to the ward's heritable property according to the rules of intestate succession in Part IIIA.

(2) The guardian of a boy or girl referred to in clause (b) of subsection (1) shall be a person who has completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is by reason of absence, disability or other cuase, unable or unfit to act as such, the person next in order shall be entitled to be the guardian.

(4) Nothing in this Chapter shall affect the jurisdiction of a Court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor the Court thinks it necessary to do so.

24. Punishment of bigamy:- Any marriage between two Hindus celebrated after the commencement of this Code is void, if at the date of such marriage, either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (XLV of 1860) shall apply accordingly.

25. Power to make Rules: The Provincial Government may, by notification in the Official Gazette, make rules to regulate any matter which is to be, or may be, prescribed under this Chapter.

Chapter II- Consequences of Marriage including duties of Husband and wife.

26. Maintenance of wife: (1) Subject to the provisions of this section, a Hindu husband is bound to maintain his wife and after his death, his father shall be bound to maintain her if he has the means to do so whether out of joint or separate property.

(2) A Hindu wife may claim maintenance from her husband only if and while she lived with him:

Provided that she shall be entitled to live separately from him without forfeiting her claim to maintenance----

(a) if he is suffering from a loathsome disease:
(b) if he keeps a concubine;
(c) if he has been guilty of such cruelty as to render it unsafe or undesirable for her to live with him;
(d) if he is guilty of desertion, that is to say, of abandoning her without just causes and without her consent or against her wish, for a period of not less than two years;
(e) if he has ceased to be a Hindu by conversion to another religion;
(f) if there is any other cause justifying her living separately.

(3) The obligation of a father-in-law to maintain his widowed daughter-in-law under sub-section (1) only extends in so far as she is unable to obtain maintenance from her husband's estate or from her son, if any, or his estate, and ceases on her re-marriage.

Explanation:- The provisions of this section shall also apply to marriages celebrated before the commencement of this Code.

27. Succession to the property of parties to certain civil marriages and the issue: Notwithstanding anything contained in clause (iii) of section 1 of Part II or in any other enactment for the time being in force, succession to the heritable property of any Hindu governed by the Marumakka-tayam, Aliyasantana or Nambudri law of inheritance who contracts or has contracted a civil marriage with any other Hindu under this Part or under the Special Marriage Act, 1872 (III of 1872) or whose marriage has been registered as a civil marriage under section 18 of this Part and to the heritable property of the issue of such marriage, shall, except as regards the property referred to in clauses (i) and (ii) of the said section 1, be regulated by the provisions of this Code.

28. Consideration for consenting to marriage to be trust property:- Whereas consideration for consenting to a marriage celebrated after the commencement of this Code, any property is transferred by, or on behalf if, either party, to the marriage or any of his or her relatives, to any relative of the other party whether directly or indirectly; the transferee shall held the property in trust for the benefit of the wife and transfer it to her upon her completing the age of eighteen years, or if she dies without completing that age, to her stridhana heirs as specified in section 14 of Part II.

(2) Where +he wife has comple+ed +he qge of+eigh+een years before +he marriage, +he propec+y shall be +ransferred +o her a+ any +ime when she requires +he +ransferee +o do so.

(3) If a marriage+would no+ in fac+ have +aken piace bu+ +for +he+consen+ +here+o accorded by a rela+ive of+ei+her par+y + +o+ +he marria ge such consen+ shall be+deemed +o be a consen+ wi+hin +he meaning of +his sec+ion, al+hough i+ migh+ no+ have been necessary in law for +he c elebra+ion of a valid marriage.

Chap+er III- Nulli+y, Invalida+ion and Dissolu+ion of Marriages.

29.+Decree of nulli+y or invalidi+y of marriage:-(1) Ei+her par+y +o a marriage+celebra+ed before+or af+er+he+commencemen+ of +his+Code may, a+ any +ime, presen+ a pe+i+ion +o +he Dis+ric+ Cour+ or +o-+he High Cour+, praying+ha+ his or her marriage may be declared null and void on ei+her of +he following grounds, namely:---

(i) +ha+ a rormer husband of +he female par+y, or (excep+ i+ +he case+of a+sacramen+al marriage celebra+ed before +he commencemen+-of +his Code)+a former wife of+-+he male par+y; was living a+ +he +ime of +he marriage and +he marriage wi+h such former husband or wife was +hen in force;

(ii) +ha+ (excep+-in +he case of a marriage clebra+ed before +he commencemen+ of +his Code which was valid a+ +he +ime of +he celebra+ion) +he par+iexs are wi+hin +he degrees of prohibi+ed rela+ionship as defined in clause (b) of sec+ion1.

(2) Ei+her par+y +o a+marriage so celebra+ed+may, a+ any +ime wi+hin +hree years af+er +he celebra+ion of +he marriage, or in +he case of a+marriage celebra+ed before +he commencemen+ of +his Code, wi+hin +wo years of such commencemen+,+presen+ a pe+i+ion +o +he Dis+ric+ Cour+ or +o +he High Cour+, praying +ha+ his or her marriage may be declared invalid on any of +he following grounds, namely:----

(i) +ha+ +he responden+ was impo+en+ a+-+he +ime of +he marriage and con+inued +o be so un+il +he insi+u+ion of +he sui+;

(ii) +ha+ +he par+ies, having been married in +he sacramen+al form, are sapindas of each o+her and no cus+om or usage+permi+s of a sacaramen+al marriage be+ween +hem, provided +ha+-+his caluse shall no+ apply where +he marria ge is subsequen+ly regis+ered as a civil marriage under sec+ion 18;

(iii) +ha+ ei+her par+y is an idio+, or was a luna+ic a+ +he +ime of +he marriage.

(3) Ei+her par+y +o a marriage so celebra+ed may also presen+ a pe+i+ion +o +he High Cour+ praying +ha+ his or her+marriage may+bedeclared invalid on +he ground +ha+ +he consen+ of such+ par+y,+or where +he consen+ of his or her guardian is requisi+e under +he provisions of Chap+er I. +he consen+ of such guardianm was ob+ained by force or fraud:

Provided +ha+ +he Cour+ shall dismiss such pe+i+ion:--

(a) if i+ is presen+ed more +han a year af+er +he force had ceased+or +he fraud had been discovered or more +han a year af+er +he commencemen+ of +his Code. as +he case may be, or

(b) if +he+pe+i+ioner+has, wi+h his or her free consen+, lived wi+h +he o+her par+y +o +he marriage as husband and wife af+er +he force had ceased or +he fraud had been discovered, as +he case may be.

4. Every+decree of+nulli+y or invalidi+y of a marriage made by a Dis+ric+ Cour+ shall be subjec+ +o confirma+ion by +he

confirmation by the High Court.

(5) Where a marriage is decalred null and void on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and that one or both of the parties fully believed that the former husband or wife was dead, or where a marriage is decalred invalid on the ground specified in clause (ii) of sub-section (2) or in sub-section (3) children begotten before the decree is made shall be specified therein and shall in all respects be deemed to be, and always to have been, the legitimate children of their parents.

30-Decree for dissolution of marriage: Either party to a marriage celebrated before or after the commencement of this Code may present a petition to the District Court or to the High Court, praying that his or her marriage may be dissolved on the ground that the other party---

(a) has, without just cause, deserted the petitioner for a period of not less than five years immediately preceding the presentation of the petition; or

(b) has ceased to be a Hindu by conversion to another religion; or

(c) if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man, or leads the life of a prostitute; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of not less than five years immediately preceding the presentation of the petition; or

(e) is suffering from a virulent and incurable form of leprosy; or

(f) has been suffering from venreal disease in a communiable form for a period of not less than five years immediately preceding the presentation of the petition: or

(g) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party.

31. Decree for dissolution to be conformed by High Court: Every decree for the dissolution of a marriage made by a District Court shall be subject to confirmation by the High Court.

32. Power to make rules for associating assessors with Court: (1) The provincial Government may, by notification in the Official Gazette, make rules for associating assessors with the District Court or the High Court, as the case may be in the trial of all or any petitions presented under this Chapter.

(2) Every assessor shall be a Hindu.

(3) Rules made under this section shall specify:-
(i) the number of the assessors to be so associated;
(ii) their functions, and in particular, whether their decision or that of a majority among them shall be binding on the Court in any, and, if so, in what matters; and
(iii) the procedure of the Court generally.

33. Application of Indian Divorce Act (IV of 1869) In this Chapter the expressions, "District Court" and "High Court" shall have the same meaning as in the Indian Divorce Act (IV of 1869); and the provisions of that Act shall apply, so far as may be, in respect of the petitions presented under this Chapter, as if they were petitions presented under that Act.

34: Cus+omary or s+a+u+ory righ+s of divorce no+ affec+ed:+ No+hing con+ained in +his Chap+er shall be deemed +o affec+ any righ+ recognized by cus+om or conferred by any special enac+men+, +o+ ob+ain +he dissolu+ion of a+sacramen+al marriage, whe+her+ solemnized before or af+er +he commencement of +his Code.

Illus+ra+ions.

(i) Among cer+ain Hindu communi+ies, divorce is now allowed by cus+om in cer+ain circums+ances no+ covered by sec+ion 30. Sacramen+al marriages in +hose communi+ies may be dissolved in accordance wi+h such cus+om. They may also be dissolved under section 30.

(ii) Where+a Hindu woman governed by +he Marumakka++ayam law marries ano+her Hindu according +o +he cus+omary ceremonies, +he marriage would be a sacramen+al marriage recognized as such by +his Code. But such a marriage may be dissolved under sec+ion 6 of +he Madras Marumakka+-ayam Ac+, 1932 (Madras Ac+ XXII of 1933).

PART V- MINORITY AND GUARDIANSHIP.

1. Definitions --- In +his Par+::--

(a) "minor" means a person who has no+ comple+ed +he age of eigh+een years;

(b) "na+ural guardian" means any of the guardians referred +o in sec+ion 4 of +his Par+, but does no+ include a guardian (i) appoin+ed by +he will of +he minior's fa+her, or (ii) appoin+ed or decalred by a Cour+ of Law or (iii) empowered +o ac+ as such by or under any enac+men+ rela+ing +o any Cour+ of Wards.

2. Welfare of minior +o be paramoun+ considera+ion:-- In +he appoin+men+ or declara+ion of any person as gurandian of a Hindu minor by a Cour+ of Law +he welfare of +he minor shall be+ +he paramoun+ considera+ion and no person shall be en+i+led +o+ +he guardianship by gir+ue of +he provisons of +his Par+ or of sec+ion 23 of Par+ IV, if +he Cour+ is of opinion +ha+ his or her gurandianship will no+ be for +he welfare of +he minior.

3. Guardian no+ +o be appoin+ed for minor's undivided in+eres+ in join+ family proper+y:- Where a minor has an undivided in+eres+ in joi+ family proer+y and +he proper+y is under +he managemen+ of an adul+ member of +he family, no guardian shall be appoin+ed for +he minor in respec+ of such undivided in+eres+:

Provided +ha+ no+hing in +his sec+ion shall be deemed +o affec+ +he jurisdic+ion of a High Cour+ +o appoin+ a guardian in respec+ of such in+eres+:

4. Na+ural guardians of a Hindu minor:- The natural guardians of a Hindu minor in respec+ of +he minor's person as well as in respec+ of +he minor's proper+y, excluding his or her undivided in+eres+ in join+ family proper+y. are:---

(a) in +he case of a boy or unmarried girl- +he fa+her, and af+er him, +he mo+her, provided +ha+ +he cus+ody of a minor who has no+ comple+ed +he age of +hree years shall ordinarily be wi+h +he mo+her;

(b) in +he cse of an iilegi+ima+e boy or unmarried girl-+he mo+her and af+er her, +he fa+her;

(c) in +he case of a mrried girl- +he husband.

5. Natural guardianship of adopted son:- The natural guardianship of an adopted, from the family of his birth to the family of his adoption.

6. Powers of natural guardina:- (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guradian can in no case bind the minor by a personal convenant.

(2) The natural guardian shall not, without the previous permission of the Court----

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise. any part of the immovable property of the minor; or
(b) the Court ~~shall~~ lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2) is voidable at the instance of any other person affected thereby.

(4) Permission to the natural guardian to do any of the acts mentioned in sub-section (2) shall not be granted by the Court except case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (VIII of 1890), shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the Court under section 29 of that Act. and in particular---

(a) proceedings in connexion with the application shall be deemed to be proceedings under that Act within the meaning of section 4-A thereof;
(b) the Court shall observe the procedure and have the powers specified in sub-sections (2) (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the Court refusing permission to the natural guradian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, "Court" means the District Court within the local limits of which the immovable property in respect of which the application is made, or any part thereof, is situated.

7. Revocation of authority by natural guardian:- Where the natural guardian of a Hindu minor authorises another person to take charge of the minor; the authority is revocable unless, it is undesirable in the interests of the minior to permi revocation owing to the way in which the authority has been acted upon, or owing to the way in which the authority has been acted upon, or owing to the natural guardian having ceased to be a Hindu, or owing to any other reason.

8. Testamentary guardian and his powers:- (1) A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property (other than the undivided interest referred to in section 3), or in respect of both.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian in preference even to the mother and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will, without

wi+hou+ prejudice however +o +he righ+ conferred on +he mo+her by +he proviso +o clause (a) of sec+ion4.

(3) The right of +he guardian so appoin+ed shall, where +he minor is a girl cease on her marriage.

9. Du+y of guardian +o bring up minor as a Hindu:- I+ shall be +he du+y of +he guardian of a Hindu minor +o bring up +he minor as a Hindu.

10. De-fac+o guardian no+ +o deal wi+h minor's proper+y:- Af+er +his Code comes in+o force, no person shall be en+i+led +o dispose of, or deal wi+h, +he proper+y of a Hindu minor merely on +he ground of his or her being +he de fac+o guardian of +he minor.

PART VI. ADOPTION.

Chapter I- Forms, Condi+ions and Legal consequences of adop+ion.

Division I- Adop+ion in Da+-aka Form.

1. Ka+-aka adop+ing +o be regula+ed by Sec+ion I- A son may be adop+ed in +he da+-aka form by or +o any male Hindu in accordance wi+h and subjec+ +o +he provisions hereinaf+er con+ained in +his Division; and all references +herein +o adop+ion or +o a son +aken or +o be +aken in adop+ion shall be cons+ued, unless +here is some+hing repugnan+ in +he subjec+ or con+ex+, as references +o adop+ion in +he da+-aka form or +o a son +aken or +o be +aken in adop+ion in such form as +he case may be.

2. Adop+ion by widow +o be +o husband:- A Hindu widow may adop+ a son +o her husband in accordance wi+h and subjec+ +o +he provisions hereinaf+er con+ained in +his Division.

3. Daugh+ers no+ +o be adop+ed:- No daugh+er shall be adop+ed by or +o any male or female Hindu.

4. Condi+ions of valid adop+ion:- No adop+ion is valid unless:---

(i) +he person adop+ing has +he capaci+y, and also +he righ+, +o +ake in adop+ion;
(ii) +he person giving in adop+ion has +he capaci+y +o do so;
(iii) +he person adop+ed is capable of being +aken in adop+ion ;
(iv) +he adop+ion is comple+ed by an ac+ual giving and +aking; and
(v) +he adop+ion complies wi+h +he o+her condi+ions men+ioned in +his Division.

5. Capaci+y +o +ake in adop+ion:--(1) Any male Hindu who is of sound mind and has comple+ed +he age of eigh+een years has +he capaci+y +o +ake a son in adop+ion:

Provided +ha+ a Hindu who has one or more wives living shall no+ adop+ excep+ wi+h +he consne+ of his wife or of one of his wives, unless +he wife or all +he wives, as +he case may be, are incapable of consen+.

(2) Any Hindu widow who is of sound mind and has comple+ed +he age of eigh+een years has +he capaci+y +o +ake a son in adop+ion +o her husband, provided---

(a) he has no+ expressly or impliedly prohib+ed her from adop+ing, and
(b) her power +o adop+ has no+ +ermina+ed.

Explana+ion:- No+ ing in +his sub-sec+ion shall be deemed +o preven+ a Hindu widow who has no+ comple+ed +he age of eigh+een years from adop+ing +o her husband a boy named by him in an au+hori+y conferred on her in +he manner hereinaf+er provided.

(3)

(3) save as provided in sub-sections (1) and (2) no male or female Hindu has the capacity to take a son in adoption.

6. Authority or prohibition in regard to adoptions:- (1) Any male Hindu who has the capacity to take a son in adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing so.

(2) Where there are more wives than one, the authroity may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, has expressly authroised any of them to adopt a son, he shall be deemed, by implication, to have prohibited the others from adopting.

7. Manner of giving authority or imposing prohibition or revoking the same:- (1) No authority to adopt, and no prohibition of adoption shall be valid, unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908) or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act 1925 (XXXIX of 1925).

(2) Any authroity or prohibition so given or imposed may be revoked either by an instrument registed, or a will executed, as aforesaid.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes provided in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schddule III to that Act.

8. Right to adopt as between two or more widows:- Where a Hindu has left two or more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions:--

(a) If he has granted to all or any of them authority to adopt indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to who m authority has been granted, as determined by section 9.

(c) If he has neither authroised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section9.

(d) A widow hafing the right to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument; if she does not so renounced it and if, without just cuase, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior widow, and so on down to the last widow in the order of seniority.

9. Seniority among wives and widows: For the pruposes of this Division , seniority among the wives or widows of a person is determined by the order in which they were married to him , the woman who was married earlier being reckoned senior to the woman who was married later.

10. Widow's right to adopt not exhausted by previous exercise: A widow may, subject to the provisions of this Division, adopt several sons in succession, one after the death of another unless the authority, if any, conferred upon her by her husband otherwise provides.

11. Termination of widow's right: (1) A widow's right to adopt terminates-

(a) when she remarries, or
(b) when any Hindu son of her husband dies, leaving him surviving a Hindu son, widow or son's widow.

Explanation:- In this sub-section, son means son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption.

(2) Once terminated, the widow's right to adopt can never revive.

12. Capacity to give in adoption ----(1) The only persons having the capacity to give a boy in adoption are his father and his mother.

(2) The primary right is that of the father, but he shall not exercise it without the consent of themother where she is capable of consent.

(3) The mother may give the boy in adoption----

(a) if the father is dead,
(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 11 of Part II, or
(c) if he is incapable of consent:

Provided that the father has not prohibited her from doing so by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years.

13. Capacity to be taken in adoption: For a boy to be capable of being taken in adoption, he must satisfy the following conditions:---

(i) He must be a HIndu.
(ii) He must never have been married.
(iii) Unless he belongs to the same gotra as the adoptive father, his upanayana ceremony must not have been performed.
(iv) He must not have completed the age of fifteen years.
(v) He must not have been already adopted.

14. Certain persons decalred capable of being adopted:- For the avoidance of doubt, it is hereby decalred that the adoption of the following persons is permissible:---

(i) The eldest or the only son of his father;
(ii) The son of a woman whom the adoptive father could(not) have legally married, and in particular, his daughter's son, sister's son, or mother's sister's son;
(iii) A stranger, although near relatives of the adoptive father exist.

15. Actual giving and taking essential but sufficient- (1) It is essential to a valid adoption that the boy to be adopted is actually given and taken in adoption by the parents concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption.

(2) The performance of the datta homam is not essential to the validity of an adoption.

16. Conditions to be complied with:- In every adoption, the following conditions must be complied with:--

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Explanation:- A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the pruposes of this clause.

(ii) Where a person has directed that his widow shall adopt only with the consent of a specified person, or within a specified period, or upon some other specified condition, and not otherwise, the adoption must be made by her strictly in accordance with such direction.

Explanation: In each case, it is for the Court to determine whether the husband intended to authorise the adoption only in accordance with the direction given by him or not.

(iii) The same boy may not be adopted simultaneiously by or to two or more fathers nor may two or more boys be simultaneiusly adopted by or to the same father.

(iv) (a) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

(b) Where the consent of either is obtained by coercion, undue influence, fraud, misrepresentation or mistake, the consent is not free within the meaning of subclause (a), but the person whose consent is so obtained may confirm the adoption after the coercion or undue influence has ceased, or after discovering the fraud, misrepresentation or mistake, as the case may be, provided that the confirmation does not prejudice the rights of other persons.

17. Adoption in contravention of Division to be void : Except in the case referred to in section 16 (iv) (b) an adoption made in contravention of the provisions of this Division shall be void; it creates no rights in the adoptive family, and destroys none in the family of birth.

18. Effects of adoption: An adopted son is deemed to be a son in his adoptive father's family with effect from the date of the adoption, all his ties in the family of his birth being severed and replaced by those created by the adoption:

Provided that---

(a) any proerty which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his birth;

(b) he cannot marry any person whom he could not have married if he had continued in the family of his birth.

19. Divesting of estates by adoption: (1) If an adoption is made within three years of the death of the adoptive father, the adopted son shall be entitled to all the rights to which a son born of the adoptive father would have been entitled in such father's estate as it stood at the time of his death, except that the adopted son shall not be entitled to any mesne profits in respect of the period before the adoption.

(2) If an adoption is made to any person within three years of the death of his son, son's son, or son's son as the case may be, the adopted son shall be entitled to all the rights to which a son born of the adoptive father and in existence on the date of such death, would have been entitled in the estate of such son, son's son, or son's son's son as it stood on that date, except that the adopted son shall not be entitled to any mesne profits in respect of the period before the adoption.

(3) In cases other than those referred to in sub-section (1) the adopted son takes, irrespective of the time of his adoption---

(a) one-half of whatever estate or estates his adoptive mother inherited from her husband or from her son, son's son, or son's son, as the estate or estates stood immediately before the adoption; and

(b) if the estate or any of the estates so inherited by her is imparible, the whole of such estate as it stood immediately before the adoption.

(4) The provisions of sub sections (1) to (3) shall also apply in respect of agricultural land, wherever situate in British India.

(5) Save as provided in this section, an adoption does not divest any person of any estate which vested in him or her before the adoption.

20. Certain agreements to be void: an agreement not to adopt, or curtailing the rights of an adopted son, is void.

21. Right of adoptive parents to dispose of their properties: (1) Where a boy is given in adoption under an express agreement which has been registered under the Indian Registration Act, 1908 (XVI of 1908) that the adoptive father or mother or both shall not dispose of his or her or their properties, or any specified portion thereof, to the prejudice of the adopted son, any such disposal shall be void.

(2) Save as provided in sub-section (1) an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will.

22. The adoptive mother, if any, in case of adoption by a male:-- (1) Where a Hindu who has a wife living adopts a son, she shall be deemed to be the adoptive mother.

(2) Where a Hindu has more than one wife living, that wife in association with whom or with whose consent he makes the adoption, or if more than one wife has been so associated or has so consented, the seniormost among the wives so associated or consenting, as the case may be, shall be deemed to be the adoptive mother, and the other wives the step-mothers, of the adoptee.

(3) Where a widower adopts within one year of his wife's death, she shall be deemed to be adoptive mother, and any other pre-deceased wife or any wife subsequently married by him shall be deemed to be the step-mother, of the adoptee.

Where more than one wife has died within a period of one year preceding the adoption, that one of such wives who died last, shall be deemed to be the adoptive mother, unless the adopter has directed or given a clear indication that some other deceased wife who is not the adoptive mother and any wife subsequently married by the adopter shall be deemed to be the step-mothers of the adoptee.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the stepmother of the adoptee, and not his adoptive mother.

23. The adoptive mother in case of adoption by widow:- (1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother and the other widows the step-mothers, of the adoptee.

(2) Where two or more widows jointly make an adoption, the seniormost amoung the widows shall be deemed to be the adoptive mother, and the other widow or widows the stepmother or stepmothers of the adoptee.

24. Valid adoption not to be concelled:- An adoption once it has been vlidly made cannot be cancelled by the adoptive father or mother or any other person nor can the adopted son renounce his status as such and return to the family of his birth

25. Applicability of provisions in this Divisfon to certain cases: (1) Nothing in this Division shall affect any adoption made before the commencement of this Code, and the validity and effect of any such adoption shall be determined as if this Code were not in force.

(2) This Division shall however apply to any adoption made after the commencement of this Code to a male Hindu who died before such commencement, subject to the following modifications;-

(a) If the adoption fulfils the requirements of a valid adoption under the law applicable to the case before the commencement of this Code, and the adopted son would, under that law, divest the estate of any person other than the adopting widow or acquire any interest in any property, he shall, with effect from the date of the adoption divest such person of such estate or acquire an interest in such property, as the case may be, and sub-sections (1) and (2) of section 19 shall apply accordingly. ~~comprised in any estate~~

(b) The adopted son shall also have the right to impeach any transfer of property comprised in any estate inherited by his adoptive mother or any of her co-widows from his adoptive father or from his son, son's son or son's son's son, so far as such transfer was not valid.

Division II. Adoption in Krittima or Godha Form.

26. Krittima and Godha adoptions (1) A person may be adopted in the krittima or godha form by any male or female Hindu who has attained the age of eighteen years, if the custom by which the parties would have been governed if this Code had not come into force, permits of an adoption in such form.

(2) The adoption shall be made in accordance with the custom, and its incidents shall also be regulated thereby.

Division III. Prohibition of other forms of Adoption.

27. Prohibition of adoption in other forms:- No one shall be adopted by or to any Hindu in any form other than the dattaka the krittima or the godha or otherwise than in accordance with the provisions of Division I or Division II, as the case may be.

Division IV. Saving:

28. Saving: Nothing in this Chapter applies to a Hindu governed by the Marumakkatayam or Aliyasanthana Law of Inheritance.

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Chap+er II. Regis+ra+ion of Adop+ions.

29. Defini+ion of " prescribed" - I, +his Chap+er, " prescribed" means prescribed by rules made under sec+ion 35.

30. Applica+ion for regis+ra+ion of adop+ion:- Any person who has made an adop+ion in +he da++aka, +he kri+rima or +he godha form may, if he or she so desires, apply for an order direc+ing +he regis+ra+ion of +he adop+ion under +his Chap+er, +o +he Dis+ric+ Cour+ having jurisdic+ion in +he place where +he adop+ion was made.

31. Applica+ion when +o be made and par+iculars +o be con+ained in i+:- The applica+ion shall be made wi+hin nine+y days of +he adop+ion, and shall s+a+e +he following par+iculars and such o+hers as may be prescribed:---

(i) The date of +he adop+ion.
(ii) The form of the adop+ion, +ha+ is, whe+her i+ was in +he da++aka, +he kri+irima, or +he godha form.
(iii) The name or names, and the age or ages, of +he person or persons +aking in adoppion.

(iv) If +he adop+er is a married man, +he name of his wife; and if he is a widower, +he name of his pre-deceased wife;

If +here are +wo or more wives or pre-deceased wives; +heir names, +he order in which, and +he da+es on which, +hey were married +o hi, and +he name of +he wife or pre-decased wife who is +he adop+ive mo+her, if any.

(v) If +he adop+er is a woman, +he name of her husband and +he names of her co-wives or co-widows, if any.

(vi) +he name and age of +he person, if any, giving in adop+ion.
(vii) The name of the adop+ed boy in +he family of his bir+h.
(viii) The age of the adop+ed boy.
(ix) The name of the adop+ed boy in +he family of his adop+ion.

32. No+ice of applica+ion +o be published:- (1) The Court shall publish a general no+ice of +he applica+ion, and also service a special no+ice +hereof on +he person, if any, who is alleged +o hae given +he boy in adop+ion as well as on +he person or persons who, if +he adop+ion had no+ +aken place, would be en+i+led, under +he provisions of Par+ II, +o inheri+ +he es+a+e of +he adop+ive fa+her, if he or his widow, as +he case maybe, were dead.

(2) In +he no+ices aforesaid, a period of no+ less +han +hir+y days from +he da+e of +he publica+ion or service +hereof shall be allowed for objec+ions.

33. Regis+ra+ion or adoption:- Af+er hearing +he objec+ions, if any, recived wi+hin +he period so allowed, +he Cour+, upon being sa+isfied of +he fac+ of +he adop+ion, shall direc+ +he Regis+rar of Bi+hs and Dea+hs for +he local area where +he adoppion +ook place, +o cause an en+ry of +he adop+ion +o be made in a prescribed regis+er, +o be called +he Regis+er of Adop+ed Children.

34. Cer+ified copy of en+ry in Regis+er +o be evidence of adop+iion:- A copy of any en+ry in +he Regis+er of Adop+ed Children, cer+ified in +he prescribed manner, shall, wi+hou+ fur+her proof, be received as evidence of +he fac+ of adop+ion in any Cour+ of Law.

35. Rules: The Provincial Government may make rules for +he prupose of carrying in+o effec+ +he provisions of +his Chap+er; and in par+icular, such rules may provide for +he levy of any fees in connec+ion +herewi+h.

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First Schedule
(See section 6 of Part I)

Year	No.	Short title.	Amendment.
1	2	3	4.
1892	III	The Special Marriage Act, 1872.	1.In the preamble, the words " and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion "shall be omitted. 2. In section2, the words "or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion" shall be omitted. 3.Sections 23 and 24; except in so far as they affect succession to agricultural land in Governor's Provinces; and the while of sections 25 and 26 shall stand repealed.

Second Schedule.
(See section 7 of Part I).

Year	No.	Short title.	Extent or repeal.
1	2	3	4
1928	XII	The Hindu Inheritance (Removal of Disabilities Act, 1928)	The whole, except in so for as it affects succession to agricultural land in Governor's Provinces.
1929.	II	The Hindu Law of Inheritance (Amendment) Act 1929	The whole, except in so far as it affects succession to agricultural land in Governor's Provinces.
1937.	XVIII	The Hindu Women's Rights to Property Act, 1937.	The Whole.
1946.	XIX	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.	The whole.
1946.	XXVIII	The Hindu Marriage Disabilities Removal Act 1946.	The whole.

THIRD SCHEDULE.
(See section 9 of Part IV)

Notice of Marriage.

To a Registrar of Hindu Civil marriages under Part IV of the Hindu Code for the District.

We hereby give you notice that a civil marriage under Part IV of the Hindu Code is intended to be contracted between us within three calendar months from the date hereof.

Names.	Condition.	Rank or Profession	Age	Dwelling place	Length of residence.
A B	Unmarried Widower	Landowner.	...	...	...
C D	Spinster Widow	...	...	...	...

Witness our hands, this day of 19.

(Signed) AB
CD.

FOURTH SCHEDULE.

(See section 14 of Part IV)

Declaration to be made by the Bridegroom.

I, AB, hereby declare as follows:-

1. I am at the present time unmarried (or a widower. as the case may be).
2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).
3. I have completed years of age.
4. I am not related to CD (the bride) within the degrees of relationship prohibited by Part IV of the Hindu Code.

(And when the bbidegroom has not completed the age of twenty-one years).

5. The consent of MN, my father (, or guardina, as the case may be), has been given to a marriage between myself and CD, and has not been revoked.)
6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment also to fine.

(Signed) AB (the bridegroom)

Declara+ion ₺o ₺e made by +he Bride.

I, CD, hereby declare as follows:--

1. I am a+ +he presen+ +ime unmarried (or a widow , as +he case may be).
2. I profess +he Hindu religion (or +he Buddhis+, +he Sikh or +he Jina religion, as +he case may be).
3. I have comple+ed years of age.
4. I am no+ rela+ed +o AB (+he bridegroom) wi+hin +he degrees of rela+ionship prohibi+ed by Par+ IV of +he Hindu Code:
(And when +he bride has no+ comple+ed +he age of +wno+y-one years unless she is a widow:)
5. The consen+ of OP, my fa+her (or guardian, as +he case may be) has been given +o a marriage be+ween myself and AB, and has no+ been revoked).

6. I am aware +ha+, if any s+a+emen+ in +his declara+ion is false; and if in making such sa+emen+, I ei+her know or beleige i+ +o be false or do no+ believe i+ +o be +rue. I am liable +o imprisonmen+ and also +o fine.

(signed) CD (+he bride).

Singed in our presence by +he above-named AB and CD:

G H }
I J } (+hree wi+nesses)
K L }

(And when +he bridegroom or bride has no+ comple+ed +he age of +wen+y-one years, excep+ in +he case of a widow:

Signed in my presence and wi+h my consen+ by +he above-named A B and C D:

M N (O P) +he fa+her (or guardian) of +he above-named AB (or CD, as +he case may be)

(Coun+ersigned) EF,

Regis+rar of Hindu Civil Marriages under Par+ IV of +he Hindu Code for +he Dis+ric+.

Da+ed +his day of 19.

Fif+h Schedule.
(See sec+ion 17 of Par+ IV)

Regis+rar's Cer+ifica+e.

I, EF, cer+ify +ha+, on +he 19. AB and CD appeared before me and +ha+ each of +hem, in my presence and in +he presence of +hree credible wi+nesses who have signed hereunder, made +he declara+ions required by Par+ IV of +he Hindu Code and +ha+ a marriage under +he said Par+ was con+rac+ed be+ween +hem in my presence.

(Signed) EF,
Regis+rar of Hindu Civil Marriages under Par+ IV of +he Hindu Code for +he Dis+ric+ of

(Signed) AB
CD
GH }
IJ } (+hree wi+nesses)
KL }

Da+ed +his day of 19.

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SIXTH SCHEDULE.
(See section 18 of Part IV)

Registrar's certificate.

I, EF, certify that AB and CD appeared before me this day and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, declared that a sacramental marriage was solemnized between them in a Hindu form on the day of 19. and expressed their desire to have such marriage registered as a civil marriage, and that in accordance with their desire; the said marriage has, this day, been registed under section 18 of Part IV of the Hindu Code as a civil marriage; having effect as such from the day of 19.; the date on which an application was made for the registration of their marriage as a civil marriage under section 18 aforesaid.

The following children born to them after the solemnization of their marriage in the Hindu form as aforesaid shall be deemed to be, and always to have been, legitimate.

Here enter the names of the children, in the order of their dates of birth, specifying against each child the date of his or her birth.

(signed) E F,

Registrar of Hindu Civil Marriage under Part IV of the Hindu Code of the District of

(signed) AB
CD

GH
IJ THREE WITNESSES.
KL

STATEMENT OF OBJECTS AND REASONS.

For sometime past there have been attempts to promote and pass piecemeal legislations on different topics of Hindu Law both in the Central and in the Provincial Legislatures. There was a growing public opinion in the country in favour of a consolidated and uniform code dealing with the different topics of Hindu Law for all the Provinces and for all sections of the Hindu Society. No thoughtful observer of the present conditions and trends in Hindu society can fail to be impressed by the great need there is to alter the law so as make it fit the new pattern to which Hindu society seems to be rapidly adjusting itself. With this end in view the Central Government by their Resolution dated 20th January, 1944 appointed the Hindu Law Committee for the purpose of formulating a vode of Hindu Law which should be complete as far as possible. This Bill reproduces the draft Hindu Code prepared by the Hindu Law committee. In drafting the Code the Hindu Law Committee held prolonged deliberations in the course of which public opinion was extensively consulted.

The Bill aims at providing unifiormity in all branches of Hindu Law for all Provinces and for all sections. The old complex, intricate and different provisions of Hindu Law have also been simplified. Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox

section of the community. Their only effect is to give a growing body of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways.

New Delhi:
The 7th April, 1947.

J.N. MANDAL.

True Copy.

Government of India

Legislative Assembly Department.

A

BILL

to amend and codify certain branches of the Hindu Law; and Annexure.

(The honourable Mr. Jogendara Nath Mandal)

True Copy.

V.L. Ethiraj Esq., C.I.E.,
Bar-at-Law.,
Public Prosecutor, Madras.

To
The Secretary to Government,
Home Department, Madras.

Opinion No. F.31-4-47, dated 11th June 1947.

Sir,

Sub: Bill- the Hindu Code- Forwarding opinion.

With reference to Memorandum No. 31056 G/47-4, Home, dated 19th May 47 I have the honour to forward herewith my opinion in the above matter.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.
Public Prosecutor.

Opinion.

I have no special opinion to offer to this Bill.

Sd.
Public Prosecutor.

True Copy

A 2

Home.

Pages 43 to blanks may be perused. The opinions called for may be awaited till 2-7-47 as already ordered.

True Copy

SERVANTS OF INDIA SOCIETY.
Madras 14.

Tele: Servindia.
Phone: 86252

Dated 18-6-1947.

Sir,

At a meeting of the Madras Branch members held at Poona on 17-6-47 the following resolution was passed.

1. This meeting approves the principles and the clauses of the bill on Child marriage Restrain.

2. This meeting approves the bill to amend and codify certain branches of the Hindu Law.

Your obedient servant,

Sd.
Senior member and Secretary.

To
The Secretary to Government,
Home Department,
Madras.

True Copy

From

The Secretary,
Bar Association,
Kumbakonam.

To

The Secretary,
Govt. of Madras;
(Home Department)
Fort St. George,
Madras.

Sir,

I beg to forward herewith the resolution of the Kumbakonam Bar Association passed by the General Body at the meeting held on 19-6-47.

Resolution passed on 19-6-1947.

"As the Hindu Code Bill was published only in the Gazette of 13th May and embodies important and radical changes affecting the entire Hindu community and as the time for consideration of the Bill is short and as in the present political atmosphere the minds of the public and the legal profession also are focussed upon the future constitution which will take shape only on the 15th August and the bill will come up only after the new constitution is framed and the new legislature chosen under the same mests; this Association is of opinion that the time for objections to the draft bill should be extended for some reasonable time till after the coming into force of the new constitution. "

Yours faithfully,

Kumbakonam,
d/19.6.1947.

Sd.
Secretary.

True Copy

Home.

46 Please see the opinion on p 53 ante and the resolution passed by the Kumbakonam Bar Association at p 55 ante. This Association was not consulted by Government. As the Government of India want the opinions by 31-7-47, it is not possible to ~~entered~~ extend the time for the receipt of opinions till August 47 as requested by the Association. The receipt of other opinions may be awaited till 2.7.47 as already ordered.

True Copy.

Copy of letter Dis.2910 dated 16th June 1947 from P.N. Ramaswami Esq., District and Sessions Judge, Nellore.

I have the honour to acknowledge receipt of your Memoranda Nos. 22949 G/47-5, dated 16th May, 1947 and 31056-G/67-4 dated 19th May 1947.

The two Bills, namely, to regulate and validate marriages between different castes and sub-castes of Hindus and for amending and codifying certain branches of the Hindu Law as now in force in British India may be conveniently considered together. Both are complementary to each other.

The Bill for the regulation and validating of marriages between different castes and sub-castes of Hindus will become superfluous if the Hindu Code Bill is passed. Section 3 Part IV of the Bill codifying Hindu Law states that a sacremental marriage may be solemnized between any two Hindus. This Bill also provides for civil marriage between any two Hindus. Therefore, Mr. Sri Prakasa's Bill need not be considered further.

In regard to the Hindu Code, the Bill codifying certain branches of the Hindu Law; I was one of the persons invited to tender evidence in writing. I have done so and I have nothing to add to it and I am an enthusiastic supporter of the Bill and consider that the Bill if passed would do for the Hindus what Macaulay's Indian Penal Code did for the entire British India in regard to Criminal Law. It will provide uniformity in all branches of Hindu Law and for all sections of people. There can be no possible objection to any one of the provisions as they are mostly of permissive and enabling character and for the rest they merely incorporate the authoritative interpretations of Hindu Law as laid down by various High Courts. I respectfully agree with the Hon'ble Mr. Jogendrana Nath Mandal that this Hindu Code will give a growing body of Hindus, men and women the liberty to lead the lives which they wish to lead without in any way affecting and infringing the liberty of those who prefer to adhere to the old ways.

(True Copy/ by Order)

Superintendent.

True Copy

Judicial Department.

From K. Srinivasan, Esq., I.C.S.,
District Judge, South Kanara,
Mangalore.

To
The Secretary to Government,
Home Department,
Government of Madras,
Madras.

Dis. No. 2898/47 dated 25th June 1947.

Sir,

Sub: Bill- The Hindu Code- Opinion- Furnished.
Ref: Memorandum No. 31056 G/47-4, dated 10-5-47 from the Government of Madras, Home Department.

I have the honour to offer the following remarks on the provisions of the Bill.

(2) Part I- Preliminary - Cl. 5(a) and 5(c) (Definitions) - Gotrajas and Bandhus are defined without limit of degrees. Since these expressions are used in prescribing devolution of heritable property, it would have far reaching consequences; as it would exclude a near cognate in favour of a very remote agnate, even beyond the fourteenth degree (which appears to be the limit at present set by the decisions with regard to agnate or gotraja succession). A limitation with regard to degrees in the definitions appears necessary.

(3) Similarly the present limit of cognate succession is confined to 5 degrees only. The provisions of the Bill contain no such limitation.

(4) Part II- Intestate Succession- Cl. 1:- The Bill, as it stands excludes agricultural land, owing to the inability of the Central Legislature to legislate in that regard under the present Constitution Act. Generally speaking, the largest part of heritable property is agricultural land. If that is left out, the Code ceases to be comprehensive and would, in a sense, be piece-meal legislation. It is desirable; therefore; that the Central Legislature should get invested with jurisdiction by consent of the Provinces, to legislate for succession to agricultural land as well.

(5) Clause 5 :- Though even under the present law, mother and father are heirs in that order, there appears to be authority for the position that they should take together. If the son and the daughter can be simultaneous heirs, there is no reason why both the parents should not take together and why one should be preferred to the other. If necessary, a distinction might be made in the shares that the mother and father should take. The same would apply to (1) father's mother and father's father (clause iv), father's father's mother and father's father's father (caluse v), mother's mother and mother's father. Similarly in the case of succession to Stridhana, mother and father might take together.

(6) Part II Cl. 10- This clause deals with a person who has no heir of any of the classes mentioned in clause 4. For all practical purposes he is attempted to be governed by a provision analogous to that applicable to hermits etc.

(7) While this is no doubt based upon Hindu Law Texts, this principle has not, as far as I am aware, ever been applied, to that extent, the introduction of these "heirs" is an innovation and appears unsuited to modern conditions.

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(8) Cases of failure of even the remotest of the numerious heirs enumerated, agnate or cognate, would be very rare. If any such case should, however, occur; the present provision would lead only to greater uncertainty and open the door to litigation. There is no reason why in such cases there should not be escheat.

(9) Clause 23:- As the whole of the Hindu Inheritance (Removal) of Disabilities) Act, 1928, is being repealed except in so far as it affects agricultural land, the saving provided for in that Act in respect of religious office of management of religious or charitable trust would also stand repealed. As the Bill at present stands, there is no disqualification even in the case of a lunatic in relation to administration of trust properties. I presume that is not the intention of the authors of the Bill. Suitable explanation or savings must therefore be embodied in the Bill.

(10) Part III A- Divisional, clause 1. This removes the principle of survivorship, the distinguishing feature of the Mitakshara Joint Hindu Family. Joint Family is, however, recognised. It is desirable to state so expressly, so that the management of the Family and the powers of the manager might continue under the existing law.

(11) Division II- Maintenance:- These provisions are bound to raise a storm of protest. Hindu Law, at present, does not recognise a legal right in all these numerous dependants defined in clause 5. A moral liability on the part of a Hindu to maintain or provide for these dependants is now sought to be converted into a legal liability. What is more important is that the testamentary capacity of a Hindu, which is apparently recognised is almost taken away by these provisions. This is objectionable in principle. Further, these provisions will lead to endless litigation between the statutory heirs and the statutory "Maintenance holders". It will be difficult to work out these provisions in practice.

(12) A person taking the property of a Hindu by testamentary disposition can hardly call the property his, till the last of these dependants has agitated his or her claim to maintenance in a court of law.

(13) Clause 6(f) :- "The past relation between the dependants and the deceased" is laid down as one of the factors determining the quantum of maintenance. This is very gague. It is indeed difficult to understand why this has been included. It would be even more difficult to apply it in practice.

(14) The delegtion of this sub clause would in no way affect the remaining provisions.

(15) Part IV- Marriage- Ch. II - Maintenance- clause 26

A Hindu wife is given separate maintenance in cases coming under clause 26(2). There is no clause disentitling her to maintenance in case of unchastity or other similar cuase. While conjugal infidelity on the husband's part is made a ground for claim to separate maintenance, there is no reason why a like conduct on the wife's part should not affect her claim.

(16) The right to separate maintenance if the husband "keeps a concubine" might be limited to such period as the hunsband persists in such conduct. There should be no objection to the husband getting the benefit of the restroation of conjugal harmoney, if he gives up his offending conduct. Probably the clause can be recast to suit such a case.

(17) Chapter III- Decreee for dissolution of marriage: The provision 30(c) seems to be a radical departure from the principles accepted in other analoguous enactments, where even a single

enactments, where even a single case of proved adultery is deemed sufficient for dissolution or divorce. The above clause requires that the wife should be "the concubine of any other man", or "leads the life of a prostitute". Apart from the difficulty of proving either of these requirements, this clause, I fear, is out of all keeping with Hindu sentiments.

(18) Part VI- Adoption- Ch. I- Division 1.- The Bill does not deal with the rights inter se of an adopted son and an afterborn natural son. Since the different High Courts have interpreted the Hindu Law Texts differently; it may be desirable to include a provision to meet such cases, the more so as cl. 16 (1) and the explanation thereto partly deal with them.

(19) Divisions II and III, clauses 26-28- The customary rights of the Krithrima and Godha forms of adoption are recognised in clause 26. prohibits all for Caluse 27 prohibits all forms of adoption other than the dattaka, Krithrima and Godha. Clause 28 probably saves the dwayamushyayana form of adoption as it obtains among Nambudris.

(20) Dwyamushyayana and Illatom adoptions are referred to in clause 2, Part II; but the customary rights of these 2 forms are not saved in the chapter on Adoption. Either this should be done or such adoptions should be expressly prohibited.

(21) Special case of persons governed by Marumakkathayam and Aliyasanthana Laws:- The code, in general, attempts to deal only with persons governed by various schools of Hindu Law. An attempt has been made to exclude its application to those governed by Marumakkathayam and Aliyasanthana Laws in the chapters on Intestate Succession and Adoption. But all other parts of the Bill would apply to them.

(22) The matriarchal system is the fundamental of the personal law in these 2 cases and it is fundmentally opposed to the patriarchal system on which Hindu law is based. But the chapters relating to maintenance and marriage, minority and guardianship are made applicable regardless of the difference in the 2 systems.

(23) For instance, the estate of a male governed by Aliyasanthana devolves upon his mother's branch. Aliyasanthana law does not recognise any rights to maintenance in the father, son's widow etc., who are defined as "dependants" in the Bill. In fact, the expressions, father sons'widow etc., doe not have the same legal import to followers of Aliyasanthana law as to those of Hindu Law.

(24) The opinion prevalent in the areas, where the above systems are in force, is that sufficient publicity about the proposed legislation has not been given; and that the opinion of these areas has not been ascertained at all.

(25) The Provincial Legislature has made enactments dealing with succession, Marriage etc., in relation to Marummakkathayam Law. Since those governed by Aliyanasanthana Law are not very numerous and are confined to one or 2 districts only, the Bill may exclude them altogher from its scope and the Provincial Government's left to legislate for them in the same manner as it has done for the Marumakkathayam. Such a course would ensure that public opinion is adequately ascertained and a comprehensive enactment is made.

I have the honour to be,
Sir,
Your most obedient servant,
Sd:
District Judge.

True Copy

Judicial Department.

From
C. Kunhirama Menon Esq., M.A.B.L.,
District Judge,
Chingleput.

To
The Secretary to Government,
Home Department,
Fort St. George, Madras.

A. No. 268/47: D No.2787 Dated 28/30-6-47.

Sir,

Sub: Bill- Hindu Code- Opinion-
Ref: Memorandum No. 31056/G47-C/19-5_47.

The Bill will require a thorough revision in view of the constitutional changes that are taking place now, before it is finally put before the Assembly.

I am in general agreement with the main provisions of the bill. It seems, however, better that a uniform system of inheritance is prescribed with reference to all kinds of proerty inclusive of agricultural lands to which this legislation is not intended to apply.

Registration of adoption should be made compulsory. I am also of opinion that dowries given in respect of married daughters will have to be taken due account of in case they are to be given right to inherit their fathers' properties.

Sd.
District Judge.

True Copy

From
P. Ramakrishan Iyer Esq.,I.C.S.,
District Judge, Cuddalore.

To
The Secretary to the Government
(Home Department),
Madras.

Sir,

Sub: Bill- The Hindu Code- Opinion-
Ref: Govt's memorandum No.31056/G/47-4 dated 19-5-47.

My predecessor Mr. P.W. Balakrishna Iyer has not left behind any remarks on the draft Code. After taking over charge from him last week, I have not had sufficient time to perus e the draft Code and offer my remarks.

I have the honour to be,
Sir,
Your most obedein servant,

District Judge.

True Copy.

Sri Kanchi Kamako+i Pee+adhipa+hi Jagadguru

Sri Sankaracharya Swami Mu++ Sams+hanam.

Camp:
Kandachipuram P.O.
Tirukoilur Taluk,
S. India.

Dated 30+h June, 1947.

From
The Manager, Camp Office,
His Holiness Jagadguru;
Sri Sankaracharya Swami Mut+.

To
The Government of India,
Law Depar+men+, New Delhi.

Through the Governmen+ of Madras, Madras.

Sir,

Sri Sankaracharya of Kanchi- Conjeevaram, Sou+h India is of opinion +ha+ +he Child Marriage-- Res+rain+ Amendmen+ Bill by Sri Thakurdas Bhargava- and the Hindu Code Bill by +he Law Member, Governmen+ of India and also Hindu In+ercas+e Regula+ing and--Valida+ing Bill by Sri Prakasa oughg+ no+ +o be allowed +o become law as +hey direc+ly infringe upon +he +ene+s of Hindu Religion

I have +he honour +o be,
Sir,
Sd.
M A N A G E R.
+o Sri Sankaracharya.
2.7.47.

True Copy

OPINION IN DUPLICATE SENT.

The Hindu Public of Chingleput in meeting assembled emphatically protest against

i. The Legislature passing any bill affecting the Hindu Religion and customs:

and ii. that the Child Marriage Restraint Amendment Bill by Sri Tamurkas Bhargava and Hindu inter-caste regulating and validating Bill by Sri Prakasa are against the Hindu Religion and sastras and subversive of the same and ought not to be allowed to be passed as Law.

iii. That they and he Hindu Code Bill by the Honourable Law member only represent ideas of social reforms imbibed from western association with the western culture and should not be countenanced by the present legislature.

iv. This meeting reinforces their protest against the Hindu Code already sent to the Government.

v. That all the three bills are infringements upon the tenets of Hindu Religion and culture and ought not to be allowed to become Law.

Sd.
President. 2.7.47.

Messrs: V.Viswanatha Iyer,
Thimmarajakulam Street,
Chingleput.

TO
The Government of India,
Law Department, New Delhi.

Through the Government of Madras, Madras.

True Copy

61

From
Sri K. Kuttikrishna Menon,
Government Pleader, Madras.

To
The Secretary to the Government
Home Department,
For S. George, Madras.

Opinion No. 50 Dated, 2nd July 1947.

Sir,

Bill- The Hindu Code- Opinion.
Memorandum No. 31056 G/47-4, dated 19th May 1947.

I have indicated my views regarding Part II of the Bill which deals with Intestate Succession in my opinions, dated 20-8 1942 and 7-5-1944. I have also expressed my views regarding Part III of the Bill relating to Testamentary succession and Part IV relating to Marriage and Divorce in my opinion dated 30-12-1944. I have nothing further to say about the provisions of the Bill.

Sd.
Government Pleader.

True Copy

Revenue Department.
Subject.

Bill- Draft Hindu Code- Opinion.

Station: Saidapet Rc. 12376/47A-1. Dated 2-7-47.

From
T.S. Ramachandran, Esq., ICS.,
Collector of Chinglepu t D.,
Saidapet.

To
The Secretary to the Government of Madras,
Home Department,
Fort St. George, Madras.

Sir,

Ref: Gov. memo 31056/47 (Home) dated 19-5-47.

I enclose a copy of the Government Pleader's opinion I have no remarks to offer.

Sd.
COLLECTORS

True Copy

Opinion- Regarding Hindu Law Amendment- Draft Code Bill.

In view of the constitutional changes this bill will have to undergo changes. Is this Act intended to apply to Hindus in the contemplated future Pakistan. What about Hindus in the States? These are matters which have to be considered before the bill could be taken for consideration. This legislation cannot and is not intended to apply rights in "Agricultural" lands, as the Central Legislature is not competent to legislate with reference to that subject. It is better that there is an uniform system of inheritence with reference to all kinds of property. Apparently in the new constitution this subject may not be dealt with by the union.

The idea to introduce changes in the line of heirs, the order of succession etc., is wholesome, as the object is to provide for nearer heirs in preference to remote gnatis and Bandhus. Is this to have retrospective effect and if so from when should be made clear. One difficulty is likely to arise. There are instances where daughters have been amply provided for by way of large dowry etc. If such married daughters are to be given right to inheri-fa-her's property they will be having double benefit while the sons and others would be deprived of there legitimate share. Such a contingency has to be provided against.

As regards Stridhana the idea to do away with the distinction regarding the rights to property of persons married in a Brahma form and of those married in Asura form of marriage, is welcome as the existence of such a distinction has led to lot of difficulties and often times to perjury in Courts of law.

The right of birth which a member of ajoint Hindu Family possesses on the date of the Act is preserved. This may lead to complications. What about a person born after the date of the commencement of this Act? Does he get a right in the property of the joint family of which he is a member. This position requires clarification.

This Act is intended to provide for maintenance of deserving members who had hither to no claim. The method aggravated for determining the rate of maintenance though some what cumersome is based upon equity and reason.

The chapters on marriage is on a line with the "Intercaste marriage" bill and I have dealt with those provisions in extenso in my opinion regarding the provisions of that Bill.

The registration of marriage is absolutely necessary. The provision for punishment for begamy, irrespective of the fact whether the offender is a male or female is salutory.

The provisions regarding the dissolution of marriage might offend against the notions of Hindu ideals or marriage being regarded not as contract but as a sacrament. The consequence of such a provision is that remarriage is allowed even in case of women. While provision might be made for maintenance, dissolution of marriage may not be permitted.

Registration of adoption might be made compulsory as it will avoid uncertainty of rights, unnecessary litigation and scope for perjury and forgery etc.

D.Dis 1016/47. Office of the District Magistrate, Bellary, dated 1-7-47.

From

K.N. Anantharaman Esq., I.C.S.,
District Magistrate, Bellary.

To

The Secretary to the Government,
Home Department, Fort St. George,
Madras.

Sir,

Sub: Bill- The Hindu Code- opinion- Report.
Ref: Govt. (Home) Memorandum No.31056 . G/47.4- dated 19-5-47.

The provisions of the Bill to amend the Hindu code are acceptable on the whole and they do simplify a lot of complicated questions like marriage and adoption over which many law suits have been fought out. My suggestions are:

1) Page 11. Section 21. Part II. Convert and descendants disqualified;

The provision to disqualify a convert and children appears to be quite drastic and I think it is not fair to place the convert on the same level as a murderer who profits by the commission of an offense.

2) Page 16, Part IV. Sec: 7 sub-section 5q It is provided that each of the parties must if he or she has not attained the age of twenty one have obtained the consent of his or her guardian etc.

As far as widows are concerned no such consent is needed- while admitting that old fashioned guardians of widows do not usually give consent to widow remarriages and that remarriage of widow is a very essential step of social reform, I am afraid that there are dangers of giving the liberty to a widow while denying this liberty to other girls of the same age. I would even say that in order to escape from unhappiness they may enter rashly into marriages with unreliable parties and may have to regret for ever. I would put in a safeguard - that in the case of a widow the consent of a guardian or if the guardian does not consent of any close adult male relative like a brother should be necessary.

Page 24. Part VI. Sec. 5. Capacity to take adoption.

Proviso under section 1.

In my opinion it is unworkable. Adoption is a religious ceremony of great importance done in the belief that the spiritual future of the ancestors in the other world would be safe-guarded. It is the belief of orthodox Hindus that the annual ceremonies done by every Hindu benefit not only his adoptive father but also the ancestors of the father.

It will be very hard to deny this valuable privilege to any Hindu becuase his wife withholds her consent, It is natural for a woman to withhold her consent as her share of the property is likely to be diminished by the adoption.

Page 26, Part VI, Sec, 13. sub section (iv)

The age limit of 15 is arbitrary especially in modern days where upanyanam is preferred only about the 16th year.

Page 26, Part VI. Sec. 13. sub section (v)

The prohibition against giving a man already adopted again in adoption is sound- provided that the adoptive father does not begot another son by his married wife after adoption.

Page 9. Part II. Section 14. Order and moes of succession to Sridhana.

"Mothers heirs" come as 7 in the order of succession. It will be better if their order is given as "6" and the present 6 "Husband's heirs" renumbered as "7".

Sd.
For District Magistrate.

True Copy

A meeting of Hindus held on 7-7-47 at Tirukoilur (South Arcot District) when Sri V.G. Ramachandra Aiyar Advocate, presided. The following resolutions were unanimously passed.

1. This meeting is of opinion that the Hindu Code Bill introduced by the Law Member, Government of India is against the religious injunctions of the Hindus, is disruptive of joint family system and will cause disharmoney in family life among the different sections of the Hindy communities. Therefore this meeting protests against the Bill being passed into Law.

2. Whereas the Child Marriage restrain Act is itself seriously objected to as it is opposed to the religious tenets of the Hindus, and has been found in practice that owing to this Act many girls are found unmarried for a very long time which caused disharmony in families the child marriage restrain amendment bill introduced by Sri Rahurdas Bhargava imposing imprisonment and fines (as if for criminal deeds) is uncalled for and unjust. Therefore this meeting is of opinion that this Bill should not be allowed to become Law.

3. This meeting is of opinton that the Hindu intercaste marriage regulating and validating Bill introduced by Sri Prakasa is highly objectionable as it is opposed to Hindu religion, Sastras and customs and is subversive of peace and tranquility among Hindu families and should not therefore be allowed to pass into Law. It will also otherwise injure the purity and strength of the several sects of Hindus.

Sd.
President.

To the Government of India Law Department,
Neew Delhi in duplicate.

Through The Government of Madras,
Law Department, Madras.

True Copy

71 55

D.Dis. 8099. G.47. Madura Collector's Office, 4.7.47.

From

Rao Sahib Sri K. Rama Varma Raja B.A.,
Collector, Madura.

To

The Secretary to Government,
Home Department, Fort St. George, Madras.

Sir,

Bills - Indian Legislature- The Hindu Code- Opinion; submitted. Govt. Memo. No. 31056.G/47-4 HOME d/19-5-46.

The bill seems to be a good attempt at codification of some of the main topics of the Hindu law, It has been drafted by the Hindu Law Committee after elaborate enquiries and ascertaining public opinion, and is likely to be of immense use.

2. It is suggested that some of the provisions given as illustrations appear to be so important that they can be more usefully added as explanations to the sections themselves.

Sd.
For Collector.

True Copy.

NOTE:

Home Department.

Pages 85-92 ante may be perused. The receipt of the other opinions may be awaited till 15-7-47.

True Copy.

5

To the Secretary to Government of Madras,
Home Department,
Fort St. George, Madras.

Madras Seva Sadan,
Chetput, 10.7.47.

Dear Sir,

With reference to your letter No. 31056/G/47-9 dated 5th July 47, I wish to inform you that at present we are unable to give any attention to the above.

Yours faithfully,

Sd.
Organising Secretary,
Madras Seva Sadan.

True Copy

From
Khan Sahib G.Abdul Sattar Sahib, B.A.,
District Magistrate, Salem.

To
The Secretary to Government,
Home Department, Madras.

Roc. 3522_M-46 D3. d. 11.7.47.

Sir,

Sub: Bill - The Hind Code- Opinion- Called for.

Ref: Govt. Memorandum No. 31056 G/47-4 d. 19.5.47.

I shall submit my report before the end of this month.

Sd:
for Dt. Magistrate.

True Copy

To

The Government of India (Law Department)

through the Government of Madras (Law Department),

MADRAS.

At a meeting held at Nellore, Nellore District, on 4-7-1947, under the presidentship of Rao Bahadur, O. Viswanatha Rao, Advocate, it was resolved as follows:--

Whereas the Child Marriage Restrain Act itself is open to serious objection and is opposed to the Sastras and has been found in practice to result in many girls remaining as maids till 30 and 40 and to cause disharmony among families, the Child Marriage Restrain Amendment Bill introduced by Sri Thakurdas Bhargava is unwarranted and unjust.

2. This meeting is of opinion that the Hindu Intercaste Marriage Regulating and validating Bill introduced by Sri Prakasa, is highly objectionable and is opposed to the Sastras and Hindu Religion and custom and is subversive of peace and harmony among the Hindu families and should not, therefore, be allowed to pass into law.

3. The Hindu Code Bill introduced by the Law Member of the Government of India. is based mostly on the views of social reformers and has not taken into account the numerous protests sent by Sanatanists- Hindus against the provisions of the Bill, and is fraught with serious consequences and is disruptive of the Hindu joint family system in vogue from time immemorial. This meeting, therefore, protests against the Bill being passed into Law.

4. The Hindu public protest against the Legislature passing any bill affecting the Hindu religion and customs.

5. The President is authorised to communicate these resolutions to the Central Government through the Provincial Government and to the concerned authorities.

Sd.

President.

True Copy.

JUDICIAL DEPARTMENT.

Subject.
BILL- THE HINDU CODE- OPINION.

Reference.

Memorandum No. 31056/D/47-4 Home dated 19-5-1947 and

Memorandum No.31056/D/47-8 dated 5-7-1947.

****

Dis. No. 1665.

Station AKURNOOL. Dated the 14th JULY 1947.

From K.S: Vaidianadha Iyer Esq., B.A., M.L.,
District Judge.

To the Secretary to the Government of Madras,
HOME. Department,
Fort St. George,
MADRAS.

Sir,

I have the honour to submit my opinion as follows:

2. The codification of Hindu Law has been quite a long-felt need. The various schools of Hindu Law held divergent views even on basic and fundamental prinniples. Judicial decisions on the subject could not naturally be consistent in the interpretation of the law since it differed from province to province. Customary law was increasing in volume and was changing from time to time: the present bill is therefore designed to render the administration of Hindu Law efficient and easy. It has manifold excellent features about it. It is marvellously concise. Great care has been bestowed in introduuing changes and variations tending to liberalise existing law and custom to suit the advancing views and needs of the Hindu society: Care has been taken to avoid compulsion or obligation on the orghodox section of the community by making the provisions permissive and enabling so that as mentioned in the Statement of Objects and Reasons "their only effect is to give a growing body of Hindus, men and women the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways".

Part I: Application of the Code: The present bill is a striking departure in respect of the application of the Hindu Law from the prevailing law: Buddhists, Jains Sikhs are comprised within the definition of 'Hindus'. In fact the application is so liberal and comprehensive that all persons who are not Muslims, Christians, Parsis or Jews ~~and~~ classed as Hindus. In respect of 'others', the Code is applicable to them unless they prove they are not governed by Hindu Law or custom or usage having the force of law: This definition is calculated enlarge the Hindu fold and obviate complications when disputes arise whether a person is a Hindu or not.

Part II. Intestate Succession: The exclusion from Intestate Succession of agricultural land in Part II Clause (1) (i) will work a serious hardship in the case of agriculturists, bulk of whose property are agricultural lands. Intestate succession should comprise agricultural land by removing succession to agricultural land from the purview of Provincial Legislatures.

Part III: Division (II) Maintenance:- Maintenance to unprovided daughters, married and unmarried, and daughters in- law under the circumstances specified is made obligatory.

Previously the obligation was merely a moral one. The change effected is a very desirable one and is calculated to aovid vagrancy.

Part IV: Marriage and Divorce: Chapter I:

Clause 7 (5) requires that parties who have completed the age of 21, except widows, must obtain the consent of his or her guardian for marriage. It is advisable to lower the age limit to 18.

Chapter II: Section 26: It is stated that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he keeps a concubine. This is too general and ~~sugue.~~ The prhibition has to be limited to cases where the husband has a continuously kept concubine; otherwise it is quite possible that the provision may be abused by the wife.

Part V: Section 6: The previous permission of the Court is insisted for before a natural guardian can deal in any manner with the immovable property of a minior. This provision, though salutory, is bound to adversely affect the minior's interests whenever money is urgently needed for the protection and benefit of the minior. The permission will take a long time to obtain, and to insist on the previous permission of the Court in all cases is bound to cause hardship to the minor. Permission is necessary but the word 'previous' may be deleeed.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.
DISTRICT JUDGE.

True Copy

JUDICIAL DEPARTMENT.

81-7

From

P. Ramakrishna Ayyar Esq., I.C.S.,
District Judge of South Arcot,
CUDDALORE N.T.

To

The Secretary to the Government of Madras,
Home Department, Fort St. George, Madras.

No. 5452 Dated 15-7-1947-

Sir,

Ref: Government Memorandum No.31056- G/47-e dated 19-5-1947.
Sub: BILL- The Hindu Code- Opinion- submission of-

I am enclosing my remakrs on the provisions of the draft Hindu Code. The Bar Association which was addressed by my predecessor early in June has not offered its remarks.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.
DISTRICT JUDGE.

True Copy

R,O.C. No.589/47.

Bar Council-Office,
High Court, Madras.
15+h July 1947.

From

Sri K.K. Rangana+ha Aiyar Avl., M.A., M.L.,
Secre+ary, Bar Council, Madras.

To

The Secretary+o Governmen+,
Home Depar+men+,
For+ S+. George.

Sir,

The Hindu Code.

With reference +o your le++er No.31056 G/47-9 da+ed 5+h July 1947 I regre+ +o inform you +ha+ +he opinion of +he Bar Council is no+ ready. As +he ma++er is of some impor+ance i+ is s+ill under +he considera+ion of +he Bar Council and I hope I will be able +o send +he opinon wi+hin 10 days.

Your obedien+ servan+,

Sd.
Secre+ary, Bar Council.

True Copy

The authros of the Code seem to have approached the question bearing the three broad principles in mind. (1) The institution of the Hindu Join Family with its connected idea of coparcenary property and rights taken by birth should be done away with. (2) The conception of the widow's estate with restrictions on her alienations which could be disputed by reversioners, should be ended. (3) A statutory right to divorce should be given to married men. and married women

2. As one auxiliary to carrying out the above substantial cahnges, they propose to make the rules of inheritance more precise and logical, more easily workable, and with the added proviso that a daughter should be given rights of inheritance to her father's property. As another auxiliary, they seek to make more precise provision for marriage, including a definition of prohibited relationships, and seek to embody in the Code itself provisions for the registration of marriages by the civil authorities. In this portion of the provisions they have sought to make monogamy obligatory also for males.

3. While making these substantial inroads into the law that has existed in this country for several thousands years, they have sought to retain one ancient institution, that of adoption.

4. While the existing law in the country has preserved a broad basis of uniformity all over the country, it has also been at the same time remarkable for variations from province to province., especially in the matter of rights of inheritance and rights of women. One concession which the Code seems to make towards the existing provincial distinctions, is found in explanation to Section 15 of the Part II where it is stated that in the province of Bombay, the widow of a person related to an intestate by full blood shall be preferred to the widow of a person related to him in the same way by half-blood: Another concession to provincial variations is found in the exemption granted in Section 1 of Part II to properties of a Hindu governed by Marukakkathayam, Aliyasanthana or Nambudri law of inheritance. While the framers of the Code in the preamble say that the bill is intended to amend and codify certain branches of the Hindu Law, the scheme of the act, seems to be designed to provide as complete a code as possible; leaving as little as possible to be dealt with either under other special laws or local customs.

5. Within the short time at disposal, it is not possible to examine minutely individual provisions especially in the sphere of order of heirs to succession, and in the sphere affecting the rights of women to find out how far they are in fonflict with well-known decisions. But since the Code does not propose to adhere to well known decision in their entirety, but propose only to adhere to them and existing law as far as possible; such an examination may not be very necessary. Perhaps the most drastic change is rule 4 or Section 7, which give the daughter a half share irrespective of the question whether she is married or unmarried, rich or poor. More than one critic has commended on the fact that this would, in cases where the daughter also gets husband's properties as well as her mother's stridhana property, place her in a more advantageious position than the son. The answere to this from a moral point of view is a very obvious one: Why should a daughter of the flesh and blood of the father be deprived of an interest in his property? Why not follow the rule of Muslim law about her right of inheritance?

6. Probably the most attractive feature of this portion of the recommendations is the short and simple rule for determining preference among non-enumerated heirs. It removes a great deal of ambiguity confusion, and seems to follow as far as possible, well-established decisions and text books of commentators. This simplification achieved by the framers

of the bill, is one which is worthy of retention.

7. Probably the provision which will attract the largest measure of criticism is the abolition of the conceptions of the joint family, the co-parcenary estate, and rights taken therein by birth by coparceners. One hears on every side, statements that the joint family has contributed so much domestic unhappiness especially among women and widows. That it has contributed to a very large volume of litigation is also an undeniable circumstance. But on the credit of the account should be placed the very many cases of material advancement of orphans both boys and girls born in undivided families, the great acts of sacrifice, love and joint effort which form perhaps the most prevalent instances of collective effort for a common good, in a land where individualism is the curse. These acts of joint effort are also conspicuous in the sphere of joint trade and business especially in trading communities like Marwaris and Nattukottai Chettiars.

8. The joint family system and coparcenary property, in the past, have provided a substantial check to the sub division and fragementation of holdings. Instances of dispute and difference leading to partition suits can be listed out only with reference to cases in civil Courts, there is also probably a good number of instances of division which have taken place by agreement before panchayatdars. But leaving these out there will be a still larger number of instances of cases where properties have remained intact for years together, at least for 2 or 3 successive generations, providing a bulwark, however temporary, against the large current of fragmentation of land. Within recent years, in Travancore, a legislation has been passed abolishing the idea of a Karanavan's property and giving all the heirs a share for thwith to be made availalble on demand. The experience there, is that this provison has led to a great deal of fragmentisation with a spreading out of small parcels of land among a large number of needy members, who find themselves suddenly poorer. A similar consequency will follow the abolition of the joint family and the idea of coparcenary estate.

9. In my view, the abolition of [illegible] coparcenary estate though it will be a logical step in accordance with the spirit of the times, may be postponed, at present, when poverty continues to be general, to a period when the economic condition of the people will have improved and alternative methods of living other than dependance on the land, have been evolved by progressive industrialisation, and the spread of village and cottage industries. This along will prevent widespread economic chaos in areas where people largely depend on land for their livelihood.

10. The second principal change is one regarding the institution of the widow(s estate. The limitation on a widow(s power of alienation can be traced to a conception of a much lower status for women in an earlier scheme of society, and a distrust of her capacity for management. It is no longer necessary to retain any such innibition. The broadening of a widow's rights effected no doubt in regard to non-agricultural property by Act XVIII of 1937, has been well received in the country. That provision still restricted the widow's interest in the property, to a limited one. The proposal to abolish limited interest is a salutory one, and gives the wife a much higher status in the family and consequently in society.

11. As regards the legislation for marriage:- In my view the balance of opinion will be in favour of the codification of marraige laws, including precise provisions about consanguinity and prohibited relationships and the provision for registration of marriage both sacramental and civil. This will no doubt

this will no doubt necessitate a large number of petty officials charged with the duty of registration of marriages. In Malabar when such a provision of registration of marriages was introduced some years ago, Registeres were directed to be maintained by the Tahsildars in the Taluk Offices. Perhaps similar provision will have to be introduced with the consequent large increase in the volume of work.

12. I would like to make one comment regarding degrees of prohibited relationships. In Part IV Chapter 1, Section 1, sub-clause (c) the relationship of uncle and niece is stated to be prohibited one for marriage. Marriage between persons so related are not uncommon in the south and may continue for some years, and popular opinion is not positively averse to such marriages. Section 29 of Chapter III of Part IV protects such marriages if they had been celebrated before the commencement of the Code. Sub-clause (5) of Section 29 gives the status of legitimacy to children of parents whose marriage is declared null and void on the ground of bigamy or on the ground referred to in Sub-clause (2) or (3) of Sub-section (2) (referring to Sapinda marriages or marriage between idiots and lunatics or to marriages without consent of either party or obtained by force or fraud). But this same privilege will not be given to children of parents whose marriage is invalidated on the ground of prohibited relationships. In this country, sentiment gives much higher importance to sapinda marriages, and it is apt to be more lax in the case of degrees of prohibited relationship. For example, in the case of uncle and niece, or children of sisters. In the West the idea of sapindas is not known, and in its absence prohibited relationship assumes importance. It is therefore for consideration whether the same privilege of legitimacy to children may not also be given to children born of parents within the prohibited degree of relationship, in cases where such marriage takes place <u>after</u> the Act, and such marriages were considered valid under local law or custom before the Act came into force.

13. The next important provision is the one for divorce. No doubt, as held by more than one critic, this would take away the sacramental character of Hindu marriage, and will introduce a provision much abused in other countries in our society. Recognition of marriage as a sacrament, and the absence of provision for divorce, having always gone hand in hand. The realisation that marriage provides an indissolubie bond, has led to more happy marriages in this country than elsewhere. But if monogamy is made compulsory by law, men will be the most forward in demanding a provision for divorce, as a remedy in cases of the wife's unsuitability for one or more of the reasons, which are stated to form grounds for a divorce. It will be undeniable on moral grounds that the same privilege should be extended to women. If all the circumstances are weighed, and we come to the conclusion that monogamy should be obligatory, a provison for divorce also should follow. The existing law allowing polygamy for man and monogamy for woman, has all along left the woman at a disadvantage.

14. Through the medium of a provision contained in the section relating to marriages viz., part IV chapter 2, Section 27; the entire law of succession to heritable property under the Marumakkathayam, Aliasandana or Nambudri law of inheritance is overthrown. It is provided that when a person governed by these laws of inheritance contracts a civil marriage or registers a sacramental marriage as a civil marriage, and thereby acquires the rights under such a marriage, his property will be governed by the provisions of this Code and not by his personal local law. This provision leaves the followers of such local laws with little or no option, except to remain contended with a sacramental but unregistered marriage, if they want to retain their own laws of inheritance.

15. The main question for consideration will be whether the time is appropriate for enacting a complete Code, applicable to all Hindus in India, overriding provincial variations, and overriding certain aspects of the existing law, relating to joint family property, which have been long sanctioned by custom, or whether such of the desirable reforms could be effected by separate piece-meal legislation. By the 15th of AUGUST this year, the country is going to be split up into two broad divisions, and a very large number of Hindus in an advanced state of civilisation, will be found in Bengal, the Punjab and Sind who will not be affected by any legislation to be undertaken by the Indian Legislature. It is extremely doubtful if Hindus in Bengal will agree to adopt a legislation which modifies their provincial variations of the existing Hindu Law. In any event, the law to be enacted will not affect agricultural property, for which again provincial legislation will be necessary, unless the proposed constitutional enactments change or modify the scope of the subjects for central legislation. Assuming that a uniform piece of legislation for the rest of India excluding Pakistan provinces is necessary, then it will be advisable to have at the same time simultaneous legislation in the provinces, so that all property including agricultural property should be governed by identical provisions. It would only lead to economic confusion, if one set of laws governs non-agricultural property, and another set of laws governs agricultural property.

16. With the division of India, the need for vivifying Hindu Society, has become more urgent than at any time before in the past. The experience of history teaches us that vitality is found only in protestant movements who have behind them the core of a central burning idea. Buddhism, Sikkism, Vaishnavism and in our own days Aryasamajists, are instances. The example of Islams is sufficient to convince any one that the framing of a proper personal and property law forms part and parcel of a religious or communal revival. It has also been the experience, that when the orthodox and the conservative work seek to oppose any change, their opposition lacks force, not becuase of the logical weakness of their case, but because vitality and force are not in their party; but are found in the opposite party of protestants. In the proposed change also, the same experience, namely, that the orthodox will object, and that their objection will have no force behind it, will be repeated. But the absence of a strong opposition, will not by itself, prove to be the sole justification for a change. Those who have the welfare of the Hindu community at heart, must satisfy themselves that the forces of change, have a moral core within them and that change will leave behind not old institutions in a state of destruction, but will provide the means by which, a new and better society could be built up.

Sd.
District Judge.

True Copy

REVENUE DEPARTMENT.

From
Sri Rao Saheb M.R. Bangara, B.A.,
Collector of Kurnool. & D+. Magis+ra+e.

To
The Secretary +o Governmen+,
Home Depar+men+, Madras.

No. L. 1934/M/47 Da+ed 16-7-47.

Sir,

Bill- The H,ndu+Code- Opinion- report- subm+ed.
Ref:- Governmen+ Memorandum 31086/47-4 da+ed 19-5-47.

I recommend +he provisions in +he bill and also sugges+ +he following amendmen+s +o i+.

Par+ III-A, division II+(Maintenance sec+ion 3 enumera+es dependan+s who are en+i+led +o main+enance. I am of opinion +ha+ af+er widowed daugh+ers, wodowed sis+ers also may be included, of course wi+h +he same condi+ions as are applied +o+widowed daugh+ers. In par+ IV in sec+ion 3 clause 2, in addi+ion +o idiocy and lunacy +he words SUFFERING FROM A LOATHSOME AND CONTAGIOUS DISEASE may alsc be included.

Sd.
for Distric+ Magis+ra+e.

True Copy .

R.O.C. No. 3021/47-B1.

From

P.T. Raman Nayar Esquire, I.C.S.,
Registrar, High Court, Madras.

To

The Secretary to the Government of Madras,
Home Department, Fort St. George,
Dated 29th July 1947.

Sir,

Bill- The Hindu Code- Opinion:
Ref: Your letter No. 31056 G/47_3 Homedated 19-5-47.

The Honourable the Judges have nothing to add to the views expressed in High Court's letter R.O.C. 77 M/42-B1 dated 22-9-42 regarding the general provisions of the Hindu Code Bill.

With regard to persons governed by the Marumakkatayam and Nambudiri Laws, I am to point out that they have always formed a distinct body among the Hindus with customs and usages radically different in important respects. The Marumakkatayam and Nambudiri Acts of the Madras Legislature have codified their law in a comprehensive and satisfactory manner reconciling custom with modern and progressive views. The proposed Hindu Code saves the provisions of these two Acts only in respect of matters relating to Intestate and Testamentary Succession (Parts II, III and Division 1 of Part III-A) Dissolution of Marriage (Chapter 3 of Part IV) and Adoption (Part VI). The provisions of the bill relating to Maintenance (Division II of Part III-A) Marriage (Chapters 1 and 2 of Part IV) and Minority and Guardianship (Part V) would conflict with the correspohding provisions in the two Madras Acts though the former would eventually previal by virtue of its being enacted by the Central Government on a subject in the concurrent list. It is obviously unsatisfactory to leave the state of the law in such ambiguity as to require settlement by judicial interpretation and the Honourable the Judges would accordingly suggest that in respect of these conflicing matters the position should be clearly defined.

I am to add that their Lordships do not see any reason why the existing law, about which there has been no dissatisfaction or complaint, whould be disturbed and would therefore suggest that all the matters for which specific provision has been made in the two Madras Acts be left unaffected.

Sd.
REGISTRAR.

True Copy.

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R.O.C. No. 408/47.

Bar Council Office,
High Court, Madras.
30th July 1947.

From

Sri K.K. Ramakrishna Aiyar Avb., M.A., M.L.,
Secretary, Bar Council, Madras.

To

The Secretary to Government,
Home Department, Madras.

Hindu Code.

Sir,

With reference to your letter No. 31056-G/47-5 dated 10th May 1947. I have the honour to enclose herewith the opinions of the Bar Council on the above subject.

Your obedient servant,

Sd.

Secretary, Bar Council.

True Copy

HINDU CODE.

Part II- Intestate Succession.

Section 5 (1) :- If the rights conferred upon the heirs in Sec.5 and the order of succession are based upon natural affection of the person dying intestate, the widow of a predeceased son or the widow of a predeceased son of a predeceased son has no place in clause (1) sub clause (i). The provision as to maintenance as dependants is sufficient. If however the object is to provide them with a share in the estate they ought not to be preferred to a brother or sister and must find a place much lower down in class 4 or class 5. It cannot be said that it is based upon the principle that they take the place of the son or son's son as the case may be who would have taken a share if he had been alive in view of the fact that the right by birth of the son or son's son is not recognised in the Code.

(2) Having regard to the fact that an absolute estate is conferred by the code on females, it is not right to postpone the father to the mother, both the parents must be clubbed together and given equal shares. This would equally apply to the paternal grand parents and great grand parents and maternal grand parents.

(3) The order of heirs mentioned in the code does not seem to correspond to the usual order of affection which the person dying would have to his relatives. Taking that as the basic principle, the brother has to be given a place only after the grand children and the sister should come immediately after the brother. These would be followed by the great grand children mentioned in class 2. The brother's son sister's son, brother's daughter, sister's daughter, and brother's sons son, may be provided in the order mentioned above in class III.

Stridhana: Succession to.

The husband must succeed to his wife along with the daughter and son. If a widow succeeds to a male dying intestate along with his son and daughter there is no apparent reason why the same principle should not be adopted in the case of succession to a woman's property and the husband given the same place as the duagheer and son. and given the same share as a duaghter.

As pointed out in the chapter relating to succession to males the mother and father must be clubbed together and given equal shares.

Part IV. Marriage and Divorce.

Section 11. The period of 30 days given for persons to object to the marriage is too short. A period of 90 days might be allowed. In a land of distances it is probable that persons interested may be far away from the place of marriage in which case 30 days will not be sufficient.

Section 24. Bigamy.

Having regard to the importance attached by a Hindu to the birth of a son and the spiritual benefit conferred by his ancestors, it is a very common occurrence in India that the wife who is not able to bear a son to her husband advises him and even encourages him to marry again. In such cases both the wives live harmoniously with their husband. Further an invalid wife might prefer to retain her status as such rather than be divorced, even though her husband marries another woman. These and other considerations for the good of the first wife require that the divorce should not be thrust upon a married woman who does not want it. The definition of bigamy should be suitably amended. It is therefore suggested that at least so far as sacramental marriages are concerned, bigamy in cases where a man marries again with the consent of

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with the consent of a sonless or invalid wife should not be made an offence. On the other hand a second marriage may be made one of the grounds for divorce thus giving the wife a chance to obtain a divorce from her husband in case she finds life intolerable in her husband's household in the presence of a second wife.

Section 30. Grounds of divorce

(a) The minimum period of desertion prescribed viz 5 years is too long. Under the Matrimonial Causes Act of 1937 a period of 3 years is provided and the same might be adopted.

(b) Veneral Disease. An exception may be made in the case where the spouse seeking to obtain divorce is himself or herself responsible for communicating the disease to the other spouse. It is hardly fair to allow a spouse who has infected the other spouse with virulent veneral disease to make that a ground for divorce. Of cource this does not prevent the latter if he or she so chooses to seek divorce on that ground.

Adoption. Part VI. Section 15.

It is suggested that actual giving and taking should not be insisted upon. Experience in courts has shown that it is invariably difficult to prove such giving and taking when a long period has elapsed after the adoption. It would be sufficient if adoption is done by means of a registered instrument. In any event it might be provided that proof of giving and taking in adoption may be dispensed with, if it is done by means of a registered deed. It may be pointed out that a provision has been made for registration in the case of sacramental marriage in order to serve as evidence of marriage; a similar provision may be made in the case of adoption too.

Section 19. Sub section (i).

Provides for the divesting of the estate of the widow in the case of an adoption made within 5 years after the death of the husband. If the widow gets an absolute estate, this would lead to complications if alienations had been made in the meanwhile. If the deceased had left a daughter in addition to the widow, the daughter would get one third of his estate which would be reduced to one fifth if an adoption is made by the widow which would lead to innumerable difficulties, especially if the duaghter had made alienations in the meanwhile. The provision in sub clause 3 viz the adopted son inheriting one half of whatever estate his adoptive mother inherits from her husband or from her son as it exists at the time of the adoption may be applied to all cases irrespective of the ques tion as to when the adoption take place.

Sd.
Secretary, Bar Council.

True Copy.

No. 40.

(7)

O P I N I O N.

Sub: Bill- Hindu Code- Opinion.

Ref: Memorandum No. 31056 G/47-4 dated 19-5-1947, Home Department.

I regard the codification of the Hindu Law as a welcome step in the right direction.

Part I- Preliminary.

I have no particular comments to offer.

Part II- Ines+a+e Succession.

Section 5. Enumerated Heirs.

Class I.

I would suggest that the mother and the father should be bracketed together as joint heirs taking a half share each. Previously when the mother was taking only a limited interest, the father had a chance of succession. But as under the code the mother takes an absolute estate, the father's chance of succession will arise only in a case where there is no mother. There is no reason why both the parents should not take equal shares. The same reasoning would apply equally to the paternal grand-parents and great grand-parents and also to the maternal grand-parents.

Class II.

I would suggest that heirs No. 1 & 2 in Class II i.e. son's daughter and duaghter's daughter, should be brought in begore the brother and brother's son and immediately after the parents. Under the Hindu sentiment, grand-children are generally favoured in preference to brothers, and though a daughter's son may have to be placed in a slightly superior position on account of special considerations, the others might properly come under class I, viz. "Heirs in the compact series.

I do not also see why the sister should be placed so low in the list. She was assigned a place next to the daughter's daughterby the Act 2 of 1929 (Inheritance Amendment Act) and the public opinion was in its favour at that time. I would suggest that the brother and sister can be placed together immediately after the daughter's daughter and that they should be given equal shares. This will also be in consonance with the other provision in the Code that the daughter takes along with the son.

As regards the daughter's son and the sister's son, a son adopted by their respective husbands after their death need not be recognised as an heir. This is also the logical consequence of the provision that a man cannot adopt without his wife's consent. See section 5. Vide also the provisions of Act 2 of 1929, Re: the sister's adopted son.

Generally in the classes or Enumerated heirs dealin with under Section 5, I would suggest a different re-grouping altogether based upon the principle of natural family affections and propinquity, rather than following the principle of exhausting particular groups of descendents however remote, before taking up the next class. To illustrate my point, I would say that mother's mother, mother's father, mother's brother and mother's sister, who are placed in Class VI should come very much above all the members of V class, such as father's fatherIs Sister's daughter, the father's father's brother's sonss son and such other remote relations.

Sec+ion 14-

I would suggest that in the order of sucession to Stridhana, the heirs of the mother and the father may be placed above the heirs of the husband. Otherwise brother and sister will be postponed to the remotest sapindas of the busband.

Section 21.

The benefit of succession is given to the children of converts who are Hindus at the time the succession opens. This is as it ought to be, but there is no reason why the converte himself, who remains a Non-Hindu should have the benefit of succession to the Hindu relations, especially as sucession to his properties is governed by his personal law under which Hindus are excluded. The modificiationsbr- repeal of the Caste Disabilities Removal Act, 1850, might be considered in this connection.

Part III-A.

Division I.

The abolition of right by birth is no doubt a drastic change, but the progressive tendency of the age which is in the direction of individual ownership of properties, justifies the change. It is well known that in South India and any rate the joint family system has been rapidly breaking down.

Division II. Maintenance.

(a) No provision seems to have been made for the maintenance of dependants during the lifetime of the last holder. Under the Hindu Law there is a legal oblegation to maintain minor sons, unmarried daughters, and aged parents, whether a Hindu possesses any property or not. The obligation is personal and arises from the very existence of the realtionship.

(b) I would also suggest that provision for maintenance might be made in the case of persons who till now had rights by birth in the property with the consequential right to partition but who under the present code are deprived of all those rights. In cases where they are unable to earn their livelihood on account of unavoidable cuauses, they should be entitled to get maintenance from their father.

(c) Regarding unmarried daughters they are given the marriage expanses as "Maintenance", only when they do not take a share. There is no reason why they should be deprived of their marriage expenses in addition to a share, in exactly the same way as daughters married during the lifetime of the father get.

Part IV. Marriage and Divorce.

Section 3(1).

As regards the condition that there would not be a 'living spouse', an exception might well be made to cover cases where a childless, or sonless, or ailing wife already living, expressly agrees in writing to her husband marrying a second wife. It can even be provided that in such instances, the first wife may apply later on, if necessary; for dissolution i.e. if the other conditions of the Code are satisfied.

Section 11.

The period of one month given for raising objections to a civil marriage is too short. Similarly the period of residence fixed in Section 9 seems to be inadequate, as a couple may be enabled to enter into hasty marriages without sufficient consideration or advice from elders.

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Section 24:

The said exceptions under section 3(1) must be suitably incorporated in Section 24 and 29(1) also.

Section 30-

The minimum period of 'Desertion' fixed at 5 years seems to be too long. In the Divorce Act, it is two years and in England it is three years under the Matrimmnial causes Act of 1937. The period can be fixed as 3 years here also.

Part VI.-Adoption.

I think it may be desirable to provide that every adoption should be by a registered document or at any rate by a document in writing attested by witenesses, instead of leaving it to the parties to apply for registration. In section 12, it can be provided that the physical act of 'giving' can be delegated in writing by either of the parents.

Section 19;

The provisions as to diverting are no doubt simpler under the Code but still questions as to the validity of intermediate alienations and rights of bona fide transferees are sure to crop up.

The attempted Codification cannot in its very nature cover the entire field of problems and questions, which are likely to arise in actual practice. So many changes have been introduced into the current accepted notions that a variety of problems leading to unforeseen litigation may crop up which may have to be solved only by courts of law. Merely with a view to illustrate the position. I refer to the following :-

(1) The legal position under the Code, of the members of an existing Joint Family is far from clear. It is not expressly stated, though it seems to be the underlying idea, that the rights now vested in the junior members are not to be divested so as to make the father an absolue owner of all the properties. If their vested rights are not affected; the question arises as to whether the status of the family continues to be joint, or whether the shares of the various members become defined. If it is the latter, is the family to be considered as being divided in status by operation of law?

(2) In such families, what are the rights of subsequently born sons; and do the shares increase or decrease by subsequent deaths and births, respectively.

(3) Similarly what are the rights of the father in respect of the management of family properties? Does the pious obligation of the sons continue?

(4) In the Chapter on adoption, it is provided that, the adoption is made within three years, the adopted son takes the estate as it stood at the time of the father's death. This would prevent the widow from raising a loan even in a case of dire necessity. Similarly as regards adoption after three years, it is provided that the son takes the estate "as it stood immediately before the adoption ". It is not clear as to what is to happen where creditors have bona fide advanced simpel loans to a widow on the faith of her absolute ownership.

(5) I have already referred to the absence of provision in the code for maintenance of dependants during the life time of the owner.

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It seems to be therefore desirable that the provisions of the Code may be a little more exhaustive, and that legislation may be enacted after full consideration of all such questions.

The exemption of agricultural lands from the Act constitutes a serious handicap in the practical utility of the Code; unless all the Provincial Legislatures concerned consent to legislation by the Federal Legislature or unless they themselves initiate legislation to extent the code, so as to cover agricultural lands as well. The bulk of the property of a Hindu will be agricultural, and it will lead to anomaly if two systems of law are to prevail in respect of two sets of properties of the same individual.

Sd. K. Raja Iyer.

Madras
19-7-1947)

Advocate-General.

True Copy

Sd.
Government Solicitor.

True Copy.

Bill- The Hindu code- Bill to amend and codify certain branches of the Hindu Law- opinion-report.

From

Khan Saheb G: Abdul Sattar Saheb Bahadur, B.A.,
Collector of Salem, Salem.

To

The Secretary to Government,
Home department, Madras.

L. Dis 3522 / M/47 dt 4/13.8.47

Sir,

Ref: Government memorandum no. 31056 G/47-4 d19-5-47.

There is agreement about the need for codifying the Hindu law.

In part I section 5 clause (J) of the Bill; the definition of S'ridhan may be restricted to a.limited estate of the inherite property as most of the women are not able to protect or preserve their properties.

Regarding the rules of inheritance now introduced by this bill more provisions of the Indian succession act of 1925 may be made applicable as the rules now contemplated will creat opportunities for testate succession.

INTESTATE SUCCESSION PROVISO TO SEC. 19 OF PART II.:

The introduction of this proviso is not agreed to. Even if a wife is unchaste the husband does not come to the court and say that his wife is unchaste so long as the wife voluntarily leaves the husband, lives separately, does not seek maintenance from him and thus does not seek maintenance from him and thus does not disturb his equanimity. If the husband dies, there is none competent to question her chastity in a court. It will lead to serious results particularly in the case of joint family properties. Then there will be two sets of principles one for agricultural lands to which part II does not apply and another for other properties.

SUCCESSION TO STRIDHAN PROPERTIES (Sec. 14 sub cl. 3).

Sons and daughters should have equal shares the reason that ordinarily the son stays with the mother or the mother stays with the son throughout her life.

MAINTENANCE (PART III (A) Divn. II)

The general clause 6 may include also the following considerations to be taken into account.

1. Other dependents who would be qualified to maintenance when one dependent files a suit and others do not.

2. Circumstances of the family, present, and prospective of the person who is sought to be made liable for payment of maintenance.

3. In settling maintenance, what the man is capable of paying and not what the dependent may need, should be taken into consideration. Accordingly sec. 6 sub cl. 2 may be made wider.

Part IV chapter III Section 29 Sub Cl. 3:---

Sub Clause 3 may not be made applicable to marriages before the commencement of this code, as many forcible marriages have taken place in the past which have been later on accepted and acquesced in, by the relations and the community.

Part V Minority and guardianship: It is not sufficient if the natural guardians get court's permission to alienate minor's immovable property. There may also be a provision for the minor on attaining majority to assail the alienation on the ground that permission was obtained by misrepresentation. Secondly Section 10 as it stands will have very serious consequences to the minior, for similar restrictions laid in the prevailing Muhamadan Law have given no benficient result s in its application and its strict enforcement has only led to dishonest result s. So, it is necessary that defacto guardians who are recognised as such by the Hindu law as administered now, may be given power to apply under Section 29 of Act VII of 1890 for permission.

Part VI- Adoption: As the religious aspect of adoption has become wholly obsolete, it may be abolished together. Even without adoption, any Hindu, without a son, can make satisfactory arrangements in his life time for the performance of the funerals of himself and his wife. Adoption has only contributed to a lot of litigation, and has been the cuase of ruin of many respectable families. If at all the principle of adoption were to exist it may exist only for religious and not for secular purposes. The adopted boy should not have any rights to the properties of his adoptive parents or succeed to any other collaterals of the adoptive parents and if adopted for religious purposes he may be given property inter-vivos or by will as a part of adoption arrangments, but may not be allowed to inherit.

Nothing is said in the bill about a widow taking adoption with the assent of sapindas. Some written rules and restrictions may be introduced and the question of assent may not be left for court's decisions on perjured evidence. All provisions relating to plurality of wives and co-widows in part VI under adoption may be removed and all provisions may strictly proceed on the basis of monogomy. But in so far as adoption which have already taken place before the code, the old personal law may be allowed to prevail.

In General a number of minior details in the Chapter of Inheritance require reconsideration in order to prevent in Hindu community the evil effects which now prevail in the case of devolution among Muhammadan heirs. Splitting up small holdings amoung innumerable heirs is not agreed to as it helps none of them. It seems essential to keep such holdings in a compact state as far as possible while at the same time recognising the individual rights of the several heirs enumerated. But to have the above result a certain amount of alterations relating to Hindu Join Family and partition are necessary.

Hence at least some suitable alterations can be made in the extent of shares and enumerated of heirs set out in part II of the code. Further in as much as in the general definitions "agnate" is defined the word "Sapinda relationship" (in a restricted form) which confers a heritable right to property may also be defined. There may be agnates not in the line of heirs. To what degree of agnatic relationship the line of heirs can go, may be clearly defined as it is still a vexed question.

Sd.

for Dt. Magistrate.

True Copy

Home Department. 103
d/ 5-9-1947.

Letter No. MS. 3432.

To

The Secretary to the Government of India,
Legislative Department, NEW DELHI
(with enclosures in duplicate)*

Sir,

Bills- The Hindu Code- Opinions.

Ref: (1) Sir George Sepnce's letter No. F.229/47-C &G (Judl.) dated 16-4-1947.

(2) Mr. Prichard's letter No. 31056-G/47-12 dated 29-7-1947.

I am directed to forward copies of the opinions of the Hon. the Judges of the High Court of Judicature at Madras and of other officers; associations and private persons consulted by this Government on the provisions of the Hindu Code and to say that the Government of Madras are generally in favour of the provisions of the Bill and that they agree with the views expressed by the Hon. the Judges of the High Court and by the Advocate-General, Madras.

2. The Bill together with the statement of objects and reasons was published in Part III-A of the Fort St. George Gazette in English on 13-5-1947 and in Tamil, Telugu, Malayala and Kannada languages on 27-5-1947, with a prefatory note on the lines indicated in para 4 of the letter cited.

3. Copies of the other opinions and resolutions on the Bill received by this Government are also enclosed.

Yours obedient servant,
Sd.

True Copy

Office Assistant,
Madras Record Office,

MG.